Hsu

Parliamentary Regulation of Railway Rates
in
England

PARLIAMENTARY REGULATION OF RAILWAY RATES IN ENGLAND

BY

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CONTENTS.

Chapter I

Introduction.

Chapter II

Railways as Public Highways.

Chapter III.

Maximum Rate Clauses

Maximum Rate Clause Ineffective:-

Chapter IV.

Competitive Adjustment of the Early Railway Rates.

Chapter V.

The Beginning of General Rate Regulation

Chapter VI

The Railway and Canal Traffic Act, 1854.

Chapter VII

The Regulation of Railways Act, 1873, and the Work of the Commissioners Appointed Under it.

Chapter VIII

The Railway and Canal Traffic Act, 1888

The Bill in Parliament:-

Chapter IX

Decisions of the Railway and Canal Commission Bearing Upon Undue Preference, 1889-1914

Justifications of Undue Preference

Page

Chapter X

Revision of Goods Classification and Charge Schedules

Analysis of the Schedule of Maximum Rates

Chapter XI

The Railway and Canal Traffic Act, 1894.

The Railway and Canal Traffic Act, 1913

Analysis of the Decisions of the Railway and Canal Commission Bearing Upon the Increase of Rates, 1894-1914

Page

Chapter XII

Future Problems of Railway Regulation in England.

CHAPTER I.

Introduction.

The problem of railway control has proved to be a thorny one; much time has been devoted by leading statesmen to its solution. At the present moment three countries, America, Canada and India are conducting official inquiries into the problem. England was prevented in 1914 by the great European War from continuing the inquiry of the Royal Commission on railways. In the two most important countries, England and America, where railways are privately owned and operated, the problem of railway control has become expecially acute. Railway control may involve many problems but none of them is more important and more complicated than that of regulating railway rates and charges. The problem of regulating railway construction may be acute for a certain period and the problem of regulating railway finance concerns directly only a limited number of people. But the problem of regulating railway rates and charges extendsto all periods and is of deep interest to almost every man and woman, for in the modern state there is no business so interwoven as is the railway business with the trade and industry of a country. The kernel of the railway problem is the question of transportation charges. When the problem of charges is satisfactorily solved, other railway problems will be not of much significance. Being fully realized that the question of railway charges is vital to the solution of the whole railway problem, the writer determined two years ago to make a careful study of the Parliamentary

Regulation of railway rates in England.

The English railway system is a very instructive one. It is not only the oldest but in many ways the most interesting. Though not necessarily the most enterprising in these latter days, it has had the greatest influence on the development of railways throughout the world. It has been truly said that its very faults and short comings are instructive.[1] There is much to be learned from the English railway system not only by railway engineers, but by traffic managers, shippers and law makers. The regulation of railway rates in England has been the subject of continued and centralized legislation for over a century, and this long record alone gives to the study of it a special value.

Little need be said of the development of the English railway system, for it has been fully treated by many able writers. But a few main points regarding the development both before and after the coming of railways may be of some help to realize the historic significance of rate regulation in England. Immediately after the start of the industrial revolution about 1756 in England, the problem pressing hard for its early solution was internal communication.[2] Parliament first turned its attention to

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[1] Lawson: British Railway, P. V. Introduction.

[2] See Journal of Royal Statistical Society, 1854,V. 17, pp.156-157; Jackman: Development of Transportation in Modern England, App. 13, pp. 742-744.

Statistical View of Highway and Canal Legislation.

Acts.	Total Acts for the periods			Average Acts per decade.		
	1701-1750	1751-1790	1791-1830	1701-1750	1751-1790	1791-1830.
Road	418	1633	2440	83.6	408.2	610.0
Canal	-	70	323	-	17.5	80.7

the improvement of land transportation and later to water transportation. During the last quarter of the eighteenth and the first part of the nineteenth century, the system of internal communication both by land and water had been enormously improved, but it failed to keep pace with the increasing demands which had arisen in the manufacturing districts.[1] The lack of accommodation and equipment on the part of the canal companies was in many instances notorious, especially on the routes connecting the great industrial and distributing markets, like Manchester, Liverpool and London.[2] The shippers and manufacturers were said to have suffered considerably by the disproportionate scale of high charges. The service of transportation was not only extravagantly charged for, but ill performed. Cotton which was transported three thousand miles across the Atlantic from New York to Liverpool in 20 days took sometimes six weeks to be carried from Liverpool to Manchester, a distance of only 30 miles.[3]

In the midst of such a period when all attempted improvements of internal communication, both by land and water, promised little hope of success, when canal companies were inefficiently managed, when land transportation was slow and costly and when the pack horses, wagons and boats failed to keep pace

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1. Cunningham: Growth of English Industry and Commerce, p. 811.
2. Quarterly Revies, 1824, V. 31, p.360; Edinburgh Review, 1846, V. 84, pp. 479-531.
3. Edinburgh Review, 1846, p. 481.

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with the growth of industry, the railway came. It came to supply the industrial need of the time; it came to meet the demand of commerce.

Railways, or as they were first called, tramways - that is artificial tracks for facilitating the draught of carriages - were probably employed in England as early as in the middle of the seventeenth century.[1] The first Act of Parliament for the making of a railroad was one passed in 1801 for the building of the Surrey Iron Railway and it was on Anderson's plan.[2] It ran "from Wandsworth to Croydon for the advantage of conveying coals, corn and goods and merchandise to and from the metropolis and other places."[3] Between the Act of 1801 and that of 1821 there were not less than 20 railway Acts passed. In 1821 an Act was passed authorising the construction of a railway from Darlington to Stockton. This short line exercised an important influence on railway development, as it was the first public line on which steam power was used for locomotion and also the first to carry passengers. The Act as amended in 1823 authorised the companies to work the railways by means of locomotive engines.

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[1] Quarterly Review, V. 42, 1830, p. 383; V. 74, 1844, p. 225; Life of Lord Keeper Guilford, V. 1, p 265.

[2] Quarterly Review, V. 74, 1844, p. 229; Anderson's plan was to use flanged rails.

[3] Report, Royal Commissioners on Railways, 1867, V. 38, p.VII; Quarterly Review, 1844, V. 74, p. 232.

In 1824 the number of Acts passed for the construction of railways amounted to 24.[1] On May 5, 1826 the Liverpool and Manchester Railway Act received the Royal assent. The Liverpool and Manchester Railway was opened on September 15, 1830,[2] with it the modern railway era began. It was the first railway that was constructed for the express purpose of carrying passengers as well as freight. No other power was ever used on it but that of locomotive engines.

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1. Report, Royal Commissioners 1867, v. 38, p. VIII-IX. The Following table showing the number of railway acts passed in Parliament 1801-1845 is condensed from the account given by Mr. Porter, a member of Mr. Dalhousie's Board, in his book, "Progress of the Nation," 1847, pp. 329-332.

List of Railway Acts and Railways Completed, 1801-1845.

Year	For new Lines.	Extension of existing line.	Number of Miles completed.
1801-05	5	1	57¾
1806-10	5	3	17½
1811-15	6	4	46
1816-20	4	1	47¾
1821-25	12	5	171
1825-30	26	18	274¾
1831-35	28	34	647-2/3
1836-40	49	98	1281½
1841-45	112	121	131½

2. Blackwood Magazine: Opening of the Liverpool and Manchester Railway 1830, v. 28, pp. 823-831; Booth, H: An Account of the Liverpool and Manchester Railway.

Stimulated by the success of the two modern railway pioneers, the Stockton and Darlington, and the Liverpool and Manchester Railways, the construction of railways was very rapid in England.[1] By the end of the fourth decade of the century the important trunk lines were all either under construction or formation.

With the rapid growth of a railway system [2] the problem of internal communication in England was no longer a question of adequate transportation facilities but a problem of railway tolls, rates and charges. Laws for regulating railway rates were passed by Parliament first in connection with special Acts applicable to particular railway companies, and later in the form of general railway Acts applicable to all railway companies. The General Railway Acts were based on broad principles and in the regulation of railway rates they displaced the Special Acts.

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[1] See Lewin: British Railway System, and Scrivenor, H: Railways of the United Kingdom.

[2] The Progress of English Railways can be seen from the following table.

Year	Total Length of lines open for traffic	Total Capital paid up.	Total receipt for passenger traffic.	Total Receipt from goods traffic.
	miles	£	£	£
1840[a]	1,556	-	-	-
1845[b]	2,343	-	3,976,341	2,233,373
1849[b]	5,447	-	6,105,975	5,094,925
1854	8,053	286,068,794	10,244,954	9,970,770
1860	10,433	348,130,127	13,085,756	14,680,866
1870	15,537	529,908,673	19,301,911	24,115,159
1880	17,937	728,316,848	27,200,464	35,761,303
1890	20,073	897,472,026	34,327,965	42,220,382
1900	21,855	1,176,001,890	45,383,988	53,470,456
1910	23,387	1,318,515,417	52,758,489	61,478,643
1912[d]	23,441	1,334,963,518	54,258,402	64,048,814

a. Journal of Royal Statistics, 1853, v. 16, p 290.
b. Third Report, Railway Commission, 1850, p. 304.
c. Railway Returns, 1854-1912. d. Last Available.

The law relating to the regulation of rates in England is very complicated and intricate.[1] The main reason of the complication arose out of the wrong conception in the early days of the nature of railway transportation and the many changes of legislative policy that were needed in the successive periods. Yet on account of this very fact, English experience furnishes the best field for the study of the problem, for the regulation of railway rates has been experimented with more or less success from many angles and different phases.

The object of the present work is to trace out the history of the regulation of railway rates in England. To accomplish this, the writer has endeavored to find out, first what laws the English Parliament has adopted from time to time for the regulation of railway rates; secondly, what special circumstances led to the adoption and rejection of the various legislative measures; thirdly, why and how these laws were adopted; fourthly, how they have been adopted; fifthly, what interpretations, if any, were given to the laws by the various courts and the Commissions; sixthly, what are some of the results; and lastly, wherein lies the problem of future regulation. Special care has been exercised to draw any definite conclusion. Statements and comments whenever and wherever made are based upon actual analysis of fact and circumstances.

In writing on a subject of this kind with a rich resource of materials extending over more than a century, the writer is aware that the hardest task is to put into the work enough to anable it to be understood intelligently and completely without

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1. Parsloe: Our Railways, P. 232-235.

confusing the issue by unnecessary prolixity of detail. This aim has been kept constantly in mind, care has been exercised in selecting materials and in knitting them together and an attempt has been made to keep the whole within proper proportion. Materials used in this work are all from the original and primary sources. Bills have been compared, debates in Parliament noted and laws relating to rate regulation, pointed out with careful analysis. For these purposes the British Statutes at Large, the Parliamentary Papers and Debates, the reports by the various Select Committees and Commissioners, etc., have been used. To ascertain differences of opinion, important papers and magazines such as the London Times, the Economist, Blackwood's Magazine, the Fortnightly Review, the Railway Times, etc., have been referred to. The interpretations of the laws given by the various courts and Commissions have been taken from the cases themselves. For decisions relating to the Railway Clauses Act, 1845, various law reports have been used, and for those bearing upon the Traffic Acts, the Railway and Canal Traffic Cases, 1854-1914. The purpose of the writer in making use of the court decisions is to find out what meaning the court has given to the laws and how the laws have been applied. With this purpose in view, only important principles that help to interpret the law have been analyzed. The text of the cases ha~~ve~~s not been given unless of direct assistan~~t~~ce in making the law or underlying principles clearer. Cases decided on the same or similar principles as those discused in the text have not been given space in the text, although they have been studied. Owing to the limited

length of the work and the time of the writer, questions having little or no connection with the main issue of the subject, such as canal tolls, owner's risk rates, reasonable facilities, etc, have not been treated. It is further assumed that a reader of this work is already acquainted with the history of English railways and the theory of rate-making.

The chapters fall naturally into two divisions.[1] The first division which camprises Chapters II to IV, deals with the regulation of railway rates from 1801 to 1840 when railway companies were only under the regulation of special acts. The second division, which consists of the rest of the work except Chapter XII,

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[1] The writer finds that it is not advisable to adopt the divisions of the legislative period as proposed by some writers. The following will illustrate what was generally proposed:
Journal of Royal Statistical Society, 1860, V. 29, P. 554.
Five Periods.
1. Period of Experiment 1820-1830.
2. " " Infancy 1830-1845.
3. " " Mania 1845-1848.
4. " " Competition by great companies 1848-1859.
5. " " Contractors' Lines and Company Extension 1856-1866.

Quarterly Journal of Economics 1894, V. 8, P. 283.
Four Periods.
1. Period of Doubt and Suspicion 1824-1840.
2. Period of unlimited concession 1840-1854.
3. Period of struggle in railway policy between a tendency towards diminution of state control over industry and commerce and a tendency towards increase of this control 1854-1872.
4. Period of the victory of state control
    a. The beginning of the period 1872-1882.
    b. Period of agitation for reduction of rates
        (1). A period of high prosperity 1873-1879.
        (2). A period of occasional depression 1880-1886.

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deals with the regulation from 1840 to date when both the General and the Special Acts are in operation. The latter can be further divided into two parts. The first part, which may be entitled as the beginning of restrictive legislation, is discussed in Chapter V from 1840-1853 and in Chapter VI from 1854 to 1872. The second part begins with the Commission regulation from 1873 to date and is treated in the four Chapters VII-XI. During the period covered by the second part legislative policy was changed twice, first, in 1888, by the revision of classifications of merchandise traffic and schedules of maximum rates, and again, in 1894, by the requirement of justifying reasonableness in an increase of rates. The concluding chapter is separated by itself, although part of the substance chronologically belongs to Chapter V. The purpose is to bring out the future problem of rate regulation in England more prominently and conspicuously before the mind of the reader.

CHAPTER II.

Railways as Public Highways.

The railway is a thing, as it has been said, of only yesterday. It is true that the railway system was developed out of the colliery tramways applied to turnpike and canal traffic and it came to meet the need of the time; but its nature is entirely different from that of a turnpike, or a canal. In those early days very few understood the real nature of railway transportation, nor could they see the fundamental differences between a railway and a canal or turnpike. The unexpected revolution that followed in the change of transportation methods puzzled all alike.[1] The adoption of locomotive power was establishing a new era in the state of society, the final results of which it was impossible to anticipate and to predict.[2] Even railway promoters and the leading statesmen of the time did not have any idea of what tremendous changes there would be in the carrying business and what railways were destined to become. The Duke of Wellington, who was then the Prime Minister of England, could not, at the opening of the Liverpool and Manchester

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1. Blackwood Magazine, V. 28, 1830, P. 823: Opening of the Liverpool and Manchester Railway.
2. The following quotations, though extreme, will illustrate what was thought of railways in those early days:

"As to those persons who speculate on making railways general throughout the kingdom and superseding all the canals, all the wagons, mail and stage coaches, post-chaises, and in short, every mode of conveyance by land and by water, we deem them and their visionary schemes unworthy of notice."

"We scout the idea of a general railroad as altogether impracticable; or, as one, at least, which will be rendered nugatory in lines where the traffic is so small that the receipts would scarcely pay for the consumption of coals." Quarterly review, V. 31, 1824, P. 361-362.

Railway, 1830, conceal his surprise at the strange situation in which he, like the rest of the world, found himself so suddenly placed.[1] Both the public and Parliament did not know exactly what principles should be applied to the control of this new mode of conveyance. England had been the pioneer in railway invention and railway construction; as she had no beaten track to follow, she now also had to be the pioneer in railway legislation. Yet the conception of railways as public highways, the same as that of King's other public highways, was firmly grasped and retained in the history of railway rate legislation in England.

Under the common law in England, everyone has perfect freedom in the use of the public roads. One can use them at all hours and in any manner one pleases. There was no such a thing as a statutory monopoly of the means of conveyance on an ordinary road.[2] The use of the turnpikes and the canals, which were improved forms of public roads, was restricted only by the requirement of certain tolls. When railways came, they naturally fell into the group of their predecessors. It was no great surprise that they were treated and regarded as only improved turnpikes and canals. The early conception of a railway resulted that a railway would still be, like the turnpike in the past, the King's Highway.[3] The roadway of a railway line must be free, like the waterway, to all alike.

Dr. James Anderson who first conceived the principle of a

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1. Blackwood, 1830 V. 28, P. 824.
2. Second Report, Select Committee On Ry. Acts Enactments, 1846, P. IV.
3. Hansard, 1887, V.312,pp.125-127;Disney: Law of Carriage,P. 1.

modern railroad about the beginning of the 19th century, thought that the railways should be managed by a Public Commission and "be kept open and patent to all alike, who shall choose to employ them, as the King's Highway, under such regulations as it shall be found necessary to subject them to by law".[1] The Stockton and Darlington and the Liverpool and Manchester Railways, the two earliest ones in our modern sense, were projected and regarded as ordinary roads.[2] The privileges and rights contemplated for the early railway companies, by Parliament, and by the public were merely those necessary to enable the railway companies to construct and maintain a road which was to be open to all who might desire to use it on the payment of a certain toll to the companies.[3] The early railway companies were thus simply toll-takers; they acted as owners of the road only and received a payment for the use of it, called "road-toll". The public were conveying their own traffic, using their own locomotives, and supplying their own wagons upon the lines of the railway companies.[4] Engines belonging to different parties, and the vehicles of coach proprietors and others were running on the Liverpool and Manchester line, as recorded in the report of the Select Committee of 1837.[5] This Committee recommended as a remedy for the delay of the Imperial Mails, that the right enjoyed by pri-

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1. Recreations in Agriculture, 1800, V. 4, P. 1: Quarterly Review, V. 74, 1844, P. 227.
2. Edinburgh Review, 1846, V. 84, P. 482; Jean: Jubilee Memorial of the Railway System, pp. 20-40.
3. Edinburgh Review, 1846, V. 84, P. 525.
4. Clifford; History of Private Bill Legislation, V. 1. P. 45.
5. Report of Select Committee on Roads, 1837, Minutes of Evidence, P. 135.

vate persons of running their own engines and trains upon any railway should be extended to the Imperial Post Office.[1] The Committee of 1853 remarking on the railway practice of this period stated that it could not be doubted that railways were expected to be in practice what they were in contemplation of law, new highways freely open to the public to pass with engines and carriages at their own discretion.[2] The railway companies in the first few years of their existence were contented to remain as the owners of the line.[3] This represents the first stage of railway development.

The transition to the next stage, the provision of locomotive power by the railway companies, was a rational one. The public in most cases was unable and sometimes unwilling to furnish locomotive engines. This was especially so when railway companies found that for the sake of safety they had to fix rules and regulations regarding the use of the locomotive and rolling stock on their lines. It became apparent that it was more convenient for the railway companies to provide the motive power and fix the hours of departure and arrival, etc.[4] In the special railway acts a clause was usually inserted, authorizing the railway companies to charge for the provision of motive power.[5]

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1. Report of Select Committee on Roads, 1837, Minutes of Evidence, p. IV. British Parliamentary Paper (257) V. XVI, 341.
2. Waghorn: Railway Law, P. 2.
3. Several large carrying firms, Messrs. Pickford & Co., Messrs. Chaplin and Horne and others, developed a large carrying trade on the railways. The public dealt almost entirely with them and had practically little or no communication with the railway companies.
4. Spiller v. Great Western Railway; 14 Railway & Canal Traffic cases, P. 70.
5. Great Western Railway Act, 1835, Section 166.

The provision of locomotive power by the railway companies naturally led to the third stage of railway development, the railway companies themselves performing the carrying business. It was found necessary for the railway companies to supply not only engines, but also the whole equipment of rolling stock and a staff of officers for performing the conveyance themselves. This was the only practical method, for the railway companies were alone in a position to man and operate the necessary signals at the junction points.[1] From 1833 to 1840 railway acts authorized the railway companies not only to provide engines but also to use and employ them themselves in carrying goods and passengers. Thus the charges for railway service fell into three divisions: first, the road toll for the use of roadway; second, the locomotive toll for the use of the engine, third, a reasonable charge for conveyance. The first, road toll, was always of a fixed maximum amount stated in the special acts. Parliament no doubt thought it best to limit and fix the road tolls as the railway companies possessed the monopoly of the roadway. The other two kinds of charges, locomotive toll and conveyance charge, were not thus fixed. The reason was plain: it was expected that they would be determined by competition, since the company might legally employ their own engines and do their own carrying.[2] The fixing of these charges

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[1] Spiller v. G. W. Railway, 14 Railway & Canal Traffic Cases, P. 70.

[2] Jackman: Development of Transportation in Modern England, V. 2 p. 576.

[illegible] in the later acts passed probably shows that Parliament recognized the futility of depending on the regulation of those charges by free competition.[1]

As a result of these changes in railway practice, the situation of the various companies was far from uniform. But it is possible to group them under some four heads:[2]

1. Railway companies which acted as carriers, independent carriers being excluded from participation in the business, such as the Liverpool and Manchester Railway Company, the Newcastle and Carlisle Railway Company and the Leeds and Selby Railway Company.
2. Railway Companies which acted both as owners and carriers, independent carriers being freely allowed on their lines to compete with the railway companies in the business, such as the Grand Junction Railway Company and the Stockton and Darlington Railway Company.
3. Railway Companies which acted solely as owners, providing locomotive power and wagons; independent carriers doing the business on their lines, such as the London and Birmingham Railway Company.
4. Railway companies which acted strictly as owners, letting the carriage on their lines only to a single independent carrier,

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[1] Great Junction Railway Act, 1833, (3 W. IV, C. 34); London & Birmingham Railway Act, 1833, (3 W. IV C. 36); Great Western Railway Act, 1835, (5 and 6 W. IV, 107); Bristol and Exeter Railway Act, 1836 (6 and 7 W. IV, C. 36)

[2] Second Report, Select Committee, 1839 V. 90, P. VIII.
Third " " " 1840, PP. 9-11.
Fourth " , Railway Commission, 1851, P. XX.

such as the Bolten Leigh Railway Company and the North Union Railway Company.

The system of carriage most subjected to criticism was the fourth one--railway companies acting solely as owners but letting the carriage to some single carrier. The usual way of doing was for the railway company before admitting any carrier first to secure from him a contract or an agreement not to charge less for the carriage of goods than the price which the railway company demanded. Naturally this created much ill-feeling as it virtually developed a monopoly.[1]

As experience made clear the anomaly of competitive carriers on the same line and accordingly the necessity of the work of conveyance being undertaken by the railway company, so also it showed the need of a centralized management. The system of divided responsibility on the same line was not found to work well. The right secured to the public, by every railway Act, of running their own vehicles and engines over the railway was practically a dead letter. There were various reasons for this but only the most important ones need be given here. In the first place, on account of the struggle for the use of railway facilities, there was great danger in the running of rival trains over the same rails by various persons. This was due chiefly to the changes in tractive power. The principle of making railways open to the public would have been feasible for the line worked by horse

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[1] Fifth Report of Select Committees on Railways, 1840; P. X, Railway Times, 1840, P. 586.

power like the common roads.[1] When locomotives replaced horses the nature of a railway was made different from the ordinary road.[2] Public safety demanded that the management should be in the hands of responsible persons;[3] and that the working of the railways should be under one authority. "The liability of accidents by collision is of itself a consideration sufficient to show the necessity of placing all the trains under same common management and control."[4] The danger to public safety in allowing open use of the railway was fully discussed by the early committees, and by the Railway Department of the Board of Trade. After 1850 the erroneous principle was abandoned and the running clauses,[5] no longer enforced.

In the second place, no provision had been made to ensure for private trains and engines access to stations, water tanks and other equipment along the line.[6] The mere authority to place and run engines on railways without power to make use of stations for passengers, of coaling stations and water tanks for supplying engines with coal and water did not afford to other persons the means of competing with the railway companies for the traffic

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1. Edinburgh Review, V. 84, 1846, P. 482.
2. First Report of Railway Department, 1841, P. 1.
3. The fourth Report of the Railway Commission, 1851, P. XIX.
4. First Report of Railway Commission, 1848, P. 51.
5. "Running Clauses" were those clauses which gave to one railway company the use of the water tanks and stations and the other facilities that were necessary in order that they might avail themselves of this common law right of using the road as a common highway upon payment of tolls. See Railway Clauses Consolidation Act, 1845.
Han. 1854, V. 132, P. 588.
Waghorn: Railway Law, P. 2.
6. Report of the Royal Commission, 1867, V. 60, P. III-V.
Third Report, 1840. See Under <u>Conveyance of Passengers by Railway Companies.</u>

upon its lines. In the third place, tolls as fixed in acts of Parliament were almost always so high as to make it impossible for other parties than the railway companies to work at a profit even if the other obstacles were all removed.[1] In the fourth place, private parties were not very willing to build engines and carriages, the use of which must be subject to the rules and regulations of a railway company.[2] The change of railway companies from mere owners of their lines to exclusive carriers as well as owners was the result of circumstances and a natural development of railway business.[3] The carrying mechanism was made for the railway and the railway was made for it. It was impossible to separate them and the carrying business could only be conducted by those who had the direction and management of the railway. The railway companies, therefore, found themselves - by a necessity arising from the very nature of things and practically irrespective of either their own or the public's wishes - carriers as well as road-owners.

This important change was not accompanied without much contention. The public gave up the privilege only with great reluctance and Parliament abandoned it only because of necessity. The contention first appeared in connection with the question whether the railway companies should be allowed to become competing carriers.[4] The public had great fear of monopolies, which

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[1] Fifth Report, Select Committee, 1844, App. 2 P. 22; Waghorn: Ry. Law P. 2.
[2] Third Report, Select Committee, 1840, PP. 5-8.
[3] See also Reports of the Commissioners on Rys for Ireland, 1838; Edinburgh Review, 1839, V. 69, PP. 156-191.
[4] Second Report of Select Committee on Railways, 1839, PP. 8-10.

was probably due to their experience with canal companies. Although it was natural and more economical for the railway companies to do the carrying business, yet the public seemed at first uncertain as to the advantage of allowing the railway companies to become carriers. Many witnesses before the Select Committee of 1840 contended that the duties of a railway company should cease with providing the locomotive power, fixing the speed of conveyance, the weight to be carried, the hours of arrival and departure and such other matters of detail as were essential to the due management of the railways.[1] The railway companies, they argued, should not be allowed to carry on their own behalf. The carriers of the time, fearing the effect of competition of the railway companies upon their own carrying business, determinedly opposed the proposal.[2] They emphasized the injury that would be wrought to their business by such a change.[3] The advantages of allowing the railway companies to become carriers were, however, recognized by a few witnesses. It was urged that the railways could provide for the conveyance of goods on their own lines more cheaply than could be done by any other carriers, "because one general system for collection and delivery, the warehousing and the carriage of the goods must be more economical than when several rival establishments are kept up, each having a less amount of business."[4] Although nowadays the question seems so

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1. Third Report of Select Committee on Railways, 1840, P. 9.
2. See the case of Pickford v. Grand Junction Railway.
   Statistics of British Railway 1839, P. 23.
3. Third Report of Select Committee on Railways, 1840, P. 9.
4. Second Report, 1839. V. 90, P. VIII.

simple, that no one would hesitate to answer it, yet it is instructive to note that the Select Committee of 1839 admitted in plain words that they were "incompetent to offer an opinion to the House until further experience shall more fully develop the comparative inconvenience and advantage of either system."[1] The main object[2] of the Select Committee of 1840 was to discover whether the plan pursued by the London and Birmingham Railway Company of merely providing the locomotive power to other carriers, they themselves carrying no goods on their own accord, or that off the Grand Junction Company, who did both, was in the best interest of the public. The Select Committee of 1840 found itself able to recommend that the railway companies should be allowed to be carriers also.[3] However, the preponderance of evidence was in favor of the method adopted by the London and Birmingham Railway Company. Most of the witnesses appeared to dread the extinction of private carriers. It was only after a bitter and long contest, as in the Case of Pickford and Company v. Grand Junction Railway Company, 1842, that the right of railway companies to act as carriers was definitely recognized.[4]

The change of railway companies from mere owners to exclusive carriers, thus creating monopolicies in the carrying business, was

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[1] Second Report, 1839, V. 90, P. IX.
[2] Railway Times, 1840, P. 586.
[3] "The only measure which could effectively protect the carriers against the competition of the railway companies on whose lines they conduct their business would be a prohibition of the railway companies from acting as carriers. A full consideration of all the circumstances and a due regard for the interests of the public as well as of the parties more immediately concerned in those undertakings, have induced your committe to recommend that no such measure should be adopted by the Legislature." Third Report, 1840, P. 11.
[4] Statistics of British Railways, P. 23; Pickford & Co. v. Grand Junction Railway Company, 1842; 10 M. & W., 399.

not the fault of Parliament.[1] It is true that the nature of the railway business was imperfectly understood, so that large powers were conceded to railway companies and conditions were imposed on them which tended seriously to endanger the safety of the public and to impair the inefficiency of the means of intercourse. But the intention of Parliament not to give railway companies the complete monopoly of this means of communication was, nevertheless, evident, though made totally void by later developments. The extensive powers contained in their special acts of incorporation were obtained under the impression that the interests of the public were sufficiently secured by fixing maximum tolls and rates and providing for free competition in the supply of locomotive power and other means of conveyance. The change was made necessary by the nature of railway business.

As the railway system extended and developed itself, improvements in its organization and economy reduced to a great extent the expenses of conveyance. The restrictions and limitations as originally laid down by Parliament were thus repeatedly shown to be useless.[2] With the railway companies developing very rapidly, first as owners and finally as exclusive carriers substituting and displacing most of the means of communication then in existence, the whole country came to realize the importance of railway transportation and became alarmed at its monopolistic

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[1] Second Report, Select Committee, 1846, P. III; First Report, Railway Department, 1841, P. 1; Fourth Report, Railway Commission, 1851, P. XIX; Report,Royal Commission, 1867, V. 38 P. VII; Edinburgh Review, 1834, V. 60, PP. 94-125; Quarterly Review, 1844, V. 74, PP. 234-235.

[2] Fourth Report, Railway Commission, 1851, P. XIX.

character.[1] Railroads were no longer regarded as mere private enterprises but as great public concerns forming a new but most material factor in the development of national wealth. The main avenues throughout the country, it was said, ceased to be the property of the State and were handed over to the absolute possession of monopolists placed beyond the reach of rivalry or control.[2] England ceased to possess highways.[3] The country was intersected by roads which no one could use except by the permission of and on the conditions prescribed by their owners. England was condemned as the only country in the world whose legislature committed the singular imprudence of surrendering without available conditions and for indefinite time its public communications into private hands.

The conception in England as to the nature of public roads intensified the contention. The roads of a country, it was said, from the very nature of things are public concern. They are as necessary to a people as the air they breathe. Man should have access to each other for the supply of their respective wants whether they live in towns or are scattered over the face of a country. Common sense tells every one that the roads and streets should be free from obstruction; that the country should never divest itself in perpetuity of its right of property in its ordinary highways; and that it should never part with the right to control its highways. The designation of King's highways by which

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1. Fifth Report, Select Committee, 1853, P. 81; Blackwood, 1837, V. 41, P. 735.
2. Edinburgh Review, V. 69, 1839, P. 176.
3. Edinburgh Review, V. 84, 1846, P. 531.

all the public roads were known indicates sufficiently the right which the Crown possessed and exercised over them.[1]

Such contentions were heard in Parliament itself. Mr. James Morrison, in his speech[2] before Parliament in 1836, stated that the change which was going on and which was likely at no distant period to transfer the chief public conveyances from King's Highways to a number of joint-stock railway companies, was a subject which should demand the early, the deliberate, and the serious attention of Parliament. The legislature saw with what rapid strides the railway systems were advancing. They perceived how totally inapplicable to the new mode of communication were all the laws which regulated the old. Mr. Laing in his report[3] to the Board of Trade in 1839 stated that "as regards the public the existence of so many independent railway companies subject to no control has been attended with considerable inconvenience, in addition to the evil of high fares." Since railways were becoming by far the most important of all the means of communication, the public welfare demanded that railways should be well regulated. The contention quickly spread and soon assumed national importance. It turned out to be a question of public versus private interest, national welfare versus vested rights. The bitter complaint of the public was that the interests of the public had been too little protected. The public feared greatly that railway companies would dictate unbearable terms, such as exhorbitant charges and

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1. Second Report, Select Committee on Railway Acts Enactments, 1846, P.III and IV.
2 . Han. 1836, XXXIII, P. 977.
3. Report of Railway Statistics, 1839. P. 17.

refusing to carry this or that class of goods or passengers. No doubt in early days railway companies catered chiefly for high class traffic.[1] Railway companies on the other hand contended that they were entitled to the fruits of their enterprise and to the protection of their rights granted by Parliament. In the early days, public interest was thought to be coincident with the private interest of the railway companies. Evidence was brought before the Select Committee of 1839 that the interests of the railway companies and those of the public could never be at variance.[2] The desire for large returns does not prevent railway companies from fostering new routes and from maintaining them against existing competition, from developing new ports and from promoting competition between distant seats of trade or manufacture and the various markets for their products.

It was soon found out, however, that private interest did not coincide with public interest at all times and at all places. The private interest of the railway companies[3] would desire to shut up all rival routes by land and by water, but it would be to the public interest that they should be kept in order that the public could obtain better service and lower charges. Public interest would lead a man to go by the shortest and most convenient route but the private interest of a railway company would send him through the route where the company could make the most money

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[1] Cleveland-Stevens: English Railways, their Development and their Relation to the State, P. 80.
[2] Second Report, V. 90, P. 11; See also Report of Royal Commission, 1867, P. XLVII.
[3] Han. 1840, V. 55, P. 906; Second Report, Select Committee, 1839, P. VII; Report, Royal Commission, 1867, P. XLVII; Rept., Joint Committee, 1872, V. 13 P. XXX.

out of his trip. Private interest would aim at the maximum amount of net revenue with little regard to public convenience, while public interest would center on the maximum amount of servicability. In short, one might say that it was undoubtedly for the advantage of the railway companies to satisfy the wishes and supply the wants of the community, especially on those lines where other means of communication yet existed and maintained a competition; but there were many cases in which the interests of the railway companies and of the public were found to be opposed to each other. It was because of this divergence of interest that the public repeatedly urged, as we shall see in the following chapters, a more restrictive legislation on railways.

The reason that public interests were not adequately protected was partly due to the defective system of handling railway bills in Parliament.[1] In Parliament there were no single committee or authority into whose hands fell the bills proposing the incorporation of companies for railway construction. Such bills were referred to a special committee created for those special bills. The committee would commence and terminate with those bills. Members of the committee were usually chosen from those who had some knowledge of the bills or had some interest in the proposals. The conditions in the particular locality, as affecting the need for the proposed line, would be carefully investigated; but the

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1. Second Report, Select Committee, 1846, P. XVII; Report Royal Commission, 1867, P. VIII? IX. Cleveland-Stevens: English Railways, their Development and their Relation to the State, P. 316.

interests of the public from the point of view of the nation were insufficiently represented. Between the committees of the different years there was absolutely no connection. What was the policy of former committees, no later committee could know. Each project was considered on its own merits and sanctioned by a special act which contained the entire statutory law applicable to the undertaking. Uniformity in railway legislation was thus impossible. A greater emphasis was unconsciously laid on the local and private than on the national interest. Important questions of principles had been treated very slightly and superficially. The lack of a central supervising body for these bills was specially conspicuous.[1]

This system of Private Bill legislation[2] on railway bills was an inheritance from canal legislation. No special system for railway legislation was adopted in Parliament. Parliament simply transferred without any variation the system applicable to canals to the railways.[3] In 1836 a Select Committee was appointed "to consider the Standing Orders[4] for railroad bills and the conditions which it may be advisable to recommend for introduction into such bills, with a view to future session of Parliament."[5] It was proposed to have the railway bills first under some gen-

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1. Han., 1844, LXXII, P. 286; Fifth Report, Select Committee, 1844, P. VI.
2.. For the history of Private Bill Legislation, see Clifford: History of Private Bill Legislation, Ch. 1, PP. 267-287.
3. Report, Select Committee on Railway Bills, 1836, P. III.
4.. Standing Orders are rules and forms for the regulation of public business and debate, as well as of proceedings relating to private bills; see Clifford: History of Private Bill of Legislation, V. 2, Ch. XX; and Black's Law Dictionary, P. 1119.
5. Report, Select Committee onRailway Bills, 1836, P. 1.

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eral survey either by a Committee or the Ordinance Department; but the Committee stated that a close examination of the proposal convinced them that such an attempt would be "productive in Great Britain at least of no practical good."[1] As to the practice of appointing Committees by list, adding to such list members serving for the counties through which the railway was proposed to run, the Committee did not recommend any change. It stated that it appeared decidedly best to permit railways, in Great Britain, like all other undertakings, to be decided upon according to the judgment and interest of those who were willing to embark their capital in them. This system of Private Bill legislation continued in effect, although its evils were exposed at various times. The Select Committee of 1844 recommended that the railway bills should be submitted to some public authority, for the Parliamentary Committees were very imperfect tribunals in such matters.[2] The Select Committee of 1853 stated in the Fifth Report that the mode in which railway bills were dealt with in the House of Commons should be revised with the view of securing, by the institution of a committee of a more permanent character, a comprehensive review of all schemes submitted to Parliament in every session.[3] Parliament never gave effect to these recommendations,[4] in fact, it was already too late in 1844 and 1853, for anomaly already prevailed in other respects and it was no longer simply

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1. Report, Select Committee on Railway Bills, 1836, P. IV.
2. First Report, Select Committee, 1844, P. VI.
3. Fifth Report, Select Committee, 1853, P. 12.
4. See also Third Report, Select Committee, 1840, P. 4; Second Report, Select Committee on Railway Acts Enactment, 1846, PP. XVII-XIX; Railway Times, 1839, P. 411.

a question of changing the system of Private Bill legislation.

Returning now to the consideration of the evolution of general railway practice, we have seen that the railway companies first acted as owners of lines, then as suppliers of locomotive power, then as competitive carriers and finally as exclusive carriers. By about the year 1850 there was no longer any such thing as a railway company conveying without carrying. The new system of exclusive carrying by the railway companies prevailed everywhere.[1] Moreover, the railway companies had not only by this time succeeding in ousting the outside carriers from their lines, but they had also to a great extent succeeded in getting the carting business of the former independent carriers into their own hands.[2] For the purpose of distributing the goods, railway companies built stations for the receipt and for the dispatch of goods. For these the tolls of the railway proper were obviously inadequate and consequently the companies demanded from the shippers additional payments, a practice which proved to be a bone of contention for a long time.[3]

We are now in a position to understand the development of the

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[1] Sowerly v. Great Northern Railway, 7 Railway and Canal Traffic Cases, 165-176.

[2] Baxendale v. Great Western Railway, 1 Railway & Canal Traffic Cases, P. 202.
Sowerly v. Great Northern Railway, 7 Railway & Canal Traffic Cases, P. 165.

[3] In the Sowerly case, it was argued that "if Messrs, Pickford or Messrs. Chaplin and Horne did it in times gone by, and the railway companies have succeeded to the business, why are not they who are now performing the same duties that Pickford and Chaplin and Horne performed, entitled to make the gains or profits that those firms made when those firms were carrying it on as an independent business of their own."

English railway rate. For each distinct service[1] performed, the railway company was entitled to receive compensation. For providing the roadway the railway companies received road toll, for supplying the locomotive power, locomotive toll, and for acting as conveyors, a reasonable conveyance charge. The road tolls were fixed sums specified in the special acts from the very beginning and the other two charges were also at a later date, fixed in amount. When conveyance by the railway companies had become the usual mode, the three charges were usually combined and limited by Parliament in the maximum rate clauses[2] to something less than the aggregate of the three. In addition to the rates for conveyance, the railway company might charge under certain circumstances stations, sidings, etc. When railway companies become exclusive ^carriers, they performed, as we have said, not only the carrying business proper but also some other work belonging to the function of the former carriers, such services as loading, unloading, col-

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[1] The carriage of goods by English railways, it must be remembered, includes the following elements:
   1. Collection of goods and bringing them to the terminus of the railway.
   2. Porterage in loading, packing, etc.
   3. Use of the railway, locomotive power and wagons.
   4. Insurance against railway risk.
   5. Porterage in unloading, etc.
   6. Distribution and forwarding of goods.
   7. General insurance to the customers against carriers' risk.

That the third and the fourth of these items belong exclusively to the province of the railway companies is admotted on all hands, but it is the subject of a great deal of controversy whether the companies should undertake the other items, or leave them to other carriers, especially as regards goods which have to be forwarded beyond the terminus of the railway: Statistics of British Railways 1839, P. 22.

[2] See next Chapter.

lecting, delivering, etc. The charges for this latter group of services were not fixed by Parliament. The railway companies inherited from the carriers of the time performing the carrying business the practice of making such charges. The right of making such charges was contested for a long time and it was only settled after the passing of the Railway and Canal Traffic Act, 1888.[1]

With the increase of traffic and the improvement in management and in economy of working, the public naturally expected that railway charges would be greatly reduced.[2] As railway companies were benefitted by the evolutionary changes of their business, public interest would need better protection. But as railway rates were not much reduced and the great power of railway companies were not curtailed, the agitation against railway companies had its start and began to spread very rapidly. The complaint of high railway charges was universal.[3] The rate of charges on English railways was said to be practically unlimited. Railway companies were in every instance left at liberty to charge as high a rate on every part of their traffic as they had ever thought, or were ever likely to think, for their own advantage. The consequence was that on all the English railways except a very small number of lines placed under peculiar circumstances the charges were much

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[1] See also Hall v. London, Brighton and South Coast Railway company, 5 Railway & Canal Traffic Cases, 28; Sowerly v. Great Northern Railway, 7 Railway & Canal Traffic Cases, 161.
[2] It was said that their rates for cattle and sheep at 1846 were only one-third of those with which they started. Second Report, 1846, P. XX.
[3] Quarterly Review, 1844, V. 74, PP. 255-270; Edinburgh Review, 1846 V. 84, P. 53; Railway Reform: Its Expedience and Practicability considered, P. 12, 60.

higher than the French maximum rates.[1] Railway companies by fixing their charges for cattle and sheep too high were said to deprive the public of the benefit of the conveyance of these animals by railways. In Parliament Mr. Morrison said that if any improvement took place which tended to lower the cost or to accelerate the speed of public conveyances, the public immediately had the full benefit of it; but in the case of railways, no security was taken that the public should have the benefit of any improvement of railways.[2] England, it was said, on account of the high charges of her railways was placed at a great disadvantage in comparison with other European nations. The disadvantage was estimated to be equal to a tax of from 80 to 100 per cent on the upper and lower classes in the case of passenger traffic.[3]

We have endeavored to show in the preceding pages what was the conception of the early railways and what effects it had on the English system of making charges. Although the practice of shippers running their own trains fell early into disuse, the theory of open use was preserved in all the early railway acts and in a greater part of the modern railway legislation. The privilege was preserved in the Railway Clauses Act of 1845.[4] The theory of railway law was and is that a railway is open to any person who chooses to travel upon it with his engine and carriages,

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[1] Morrison: Defects, P. 14; Third Report, 1840, P. 4; Second Report, Select Committee on Railway Acts Enactments, 1846, P. XX.
[2] Han. 1836, XXXIII, P. 977.
[3] Morrison: Defects, P. 15.
[4] See Chapter V.

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paying the toll which Parliament sanctioned to be taken.[1] Indeed, one may say that the later regulation of railways in England still centers, as in the early days, on the one object of making railways the true Public Highways. How far England succeeded can be seen in the following chapters.

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[1] Han, 1854, V. 132, P. 588.

Chapter III - Maximum Rate Clauses.

Railway companies in England were incorporated as other joint stock companies by a Special Act of Parliament. Railway companies went to ask Parliament for certain rights and powers. Parliament on behalf of the public would lay down certain limitations and restrictions. These rights and powers with their limitations and restrictions would be enumerated and embodied in a special act. As railway enterprise was regarded in those early days as more of a private nature than of a public concern, the special acts were grouped as private, under the "Personal and Local Acts."[1] For any addition of power or any desired modifications of the powers already granted, a new special act had to be obtained from Parliament and Parliament might, and usually did, take the opportunity to revise or to add new limitations and restrictions. As different circumstances were to justify differences in treatment, these special acts were all more or less different. Each railway company was thus regulated by its own special act or acts and its special act or acts comprised all the statutory laws applicable thereto. From 1800 to 1840 no general railway act applic-

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[1] The titles of the divisions of the statutes were frequently changed. In 1760 there were two divisions - Public Statutes and Private Statutes; in 1798, three divisions - Public General Acts, Local Personal Acts declared public and to be judiciously noticed, and Private Acts; in 1816, four divisions - Public General Acts, Local and Personal Acts declared public and to be judiciously noticed, Private Acts printed by King's printer, and Private Acts, not printed; under the head of "Local and Personal Acts" down to the year 1868 were placed quasi-public Acts. Since 1868 the division was named "Local and Private Acts" - Journal of Royal Statistical Society, 1854, V. 17, P. 156; Clifford: History of Private Bill Legislation, V. 1, PP. 267-268.

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able to all railways of the country had been passed by Parliament; special railway acts reigned supreme in this period.[1]

As the growth of the English Railway system was very rapid, the special acts granted by Parliament for the construction of the railways soon increased to an enormous number. According to the report of the Royal Commission on Railways, 1867, there were from 1801 to 1867 about 1800 special railway acts and about 1,300 more special railway acts modifying the provisions of the original acts.[2] The Joint Select Committee of 1872 stated that there must have been more than 3,000 in number up to that year.[3] Mr. Parsloe[4] estimated these acts for the 6 years between 1872 and 1878 at between 400 and 500, so that from 1801 to 1880 there must have been more than 3,500 special railway acts. How many or what percentage of the special railway acts belonged properly to the period we are discussing, from 1801 to 1854, it is hard to say; but as almost all of the trunk lines and the important network in England were already built and opened to traffic before the end of the period, it is safe to assume that the greater number of those special railway acts must belong to this period.[5] One railway company was usually regulated by more than one act and

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1. After 1840 special railway acts were still more or less in force. The Regulation of Railway Act, 1840 and 1842 had no relation to rate regulation. The periodic revision of rates contained in the Act of 1844 and the Equality Clause in the Railway Clauses Act, 1845, were inoperative; the period really extends to 1854. The maximum rate clauses in the special acts were continuously in force till the year 1891-92 when the revision took place..
2. Report, 1867, Pt. 2, P. XXX.
3. Report, 1872, V. 13, P. XXXIX.
4. Parsloe: Our Railways, P. 234.
5. Jackman: Transportation in Modern England, Chapter VII; Lewin: The British Railway System, Introduction.

the regulation was thus complicated. If any single railway company of importance be taken, it will be found that there was no general act or any one special act applicable for all purposes to the whole system. The fact was that one special act would refer to a few miles here and another act to a few miles there; then one act would repeal certain provisions and another would modify certain rights of some previous act or acts. This was made necessary in the natural development of the early railway business, as the original incorporations were purely local enterprises and the lines constructed were extremely short. Not only the enormous number of these special acts increased the difficulty of the regulation, but their diverse provisions made uniform regulation almost impossible. The special clauses had gradually increased from 95 in the special act of Surrey Iron Railway, passed in 1801 to 381 in the act for the Lancaster and Carlisle Railway passed in 1844.[1] The provisions in the special railway acts had year by year become more complicated and conflicting. Even as late as 1846, this evil was not wholly remedied.[2] Of all the special acts passed in 1846 in no less than 27 of them was the prescribed number of directors and the number actually named in them at variance. In six of these the number of the directors named was greater than the prescribed number. In the Cork, Blackrock and Passage Railway Act, the prescribed number of directors was

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1. Report of the Royal Commission, 1867, P. XII.
2. See the Abstract of the Special Acts authorized in the Session of 1846 as analyzed by Messrs. Bigg and Sons.
Herapath's Railway Journal, 1847, P. 1119.

twelve, while the number named was twenty.

Among the powers granted by the special acts to the railway companies, the right of making and collecting tolls and charges to a certain maximum amount was always specified. Their restrictions were usually in the form of limiting them to a certain maximum amount of charges. The system of limiting charges to a certain maximum amount was a development of the old common law applicable to the trade of common carriers. The common law required that a common carrier must carry for a reasonable charge, although he was not bound to charge his customers alike. The obligation to charge a reasonable sum was the basis upon which the system of maximum rates were built up. Canal companies and turnpike companies were all common carriers and subject to the common law. When railways came, it was thought that railway companies would do the same kind of business and in the same manner as that of the canal companies or the turnpike companies. So the same kind of law and legislation which was applied to the canal companies and turnpike companies was made applicable to the railway companies. The early special railway acts were based upon the canal and turnpike acts and they reproduced, clause after clause, with little modification, the phraseology long common to both.[1] Railway companies were authorized to make and collect charges in the form of road tolls within the maximum amount allowed. The following illustrations show the similarity between the canal tolls and railway tolls:

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[1] Report of Royal Commission, 1867, V. 38, Pt. 1, P. VIII.

Canal tolls - Croyden Canal Act, 1801.[1]	Per ton per mile
"Timber, stone, coal, bricks, tiles and all other goods and commodities, except as here-in-after mentioned	3d.
"Dung, chalk, marl, clay, lime, compost and other manure	1-1/2d.
Railway tolls - No. 1, Croyden, Mersthorn and Godstone Railway Act, 1803.	
"Dung	2d.
"Limestone, chalk, lime, and all other manure (except dung) clay, breeze, ashes, sand and bricks.	3d.
"Timber, copper, tin, lead, iron, stone, flints, coal, charcoal, coke, culm, fuller's earth, corn and seeds, flour, malt and potatoes.	4d.
"All other goods, wares and merchandise.	6d.
No. 2, Stockton and Darlington Railway Act, 1823.	
"Limestone, materials for the repair of turnpike roads or highways and all dung, compost and all sorts of manure except lime	4d.
"Coal, coke, culm, cinders, stone, marl, sand, lime, clay, iron, stone and other minerals, building stone, pitching and paving stone, bricks, tiles, slates and all gross and unmanufactured articles and building materials.	4d.
"Lead in pigs or sheets, bar-iron, wagon-tire, timber, stoves and deals, and all other goods, wares and merchandise.	6d.

The maxima which were prescribed for the early railway companies, though varied in amount, followed practically the same schedule as those of the canal companies. Classification of goods was also more or less similar. This system of limiting railway tolls to maxima was thus based on the fundamental con-

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[1] See also Priestley: Inland Navigation and Roads under the name of the canal or railway.

ception that railways were the same in nature as canals and turnpikes. As railway business developed, railway companies became, as we have seen, not only owners of their lines, but also common carriers on their own roads as well as general carriers for all traffic, and maximum tolls naturally evolved into maximum rates. The railway toll was of three component parts - road toll, locomotive toll and a reasonable charge for conveyance. Road toll was from the beginning limited by a maximum sum. Locomotive toll was not thus limited at its beginning; it was first limited only as a reasonable sum. The evolution of the railway charges from the maximum road toll to the maximum rates shows three stages of legislation. When the special acts are classified according to the manner in which railway charges were regulated, they fall into the following three groups:

1. Acts without maximum tolls[1] or maximum rates. The South Eastern Railway Act of 1836 is a type of this class. It authorized the railway companies to charge a reasonable sum for locomotive power and wagons in addition to the tolls for the use of the line.

2. Acts with maximum tolls, but without maximum rates. The Newport and Pontypool Railway Act, 1845, is a type of this class. In Section 104 it enacted "that it shall be lawful for the com-

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[1] Toll is here used to mean a charge for the use of specific property, as applied to roads, bridges and canals, specially fixed by custom or by statute. This is the original meaning of the word "toll" but later the word "toll" is used interchangeably with the words "rate" or "charge." With this distinction kept in mind, the early legislation on railway charges will be clearer. See Hunter's Railway Rates, P. 30 and Railway Clauses Act, 1845, section 3.

pany to demand any tolls for the use of the railway not exceeding the following, that is to say:" In section 134 it further enacted "that the companies may demand for the use of steam engines or other moving power, when provided by them for propelling carriages, whether on their own railways or on any other railway, any tolls not exceeding the following; that is to say---"These maximum tolls were not combined and no maximum charges were fixed for conveyance.

3. Acts with maximum rates as well as maximum tolls. The difference between a maximum toll clause and a maximum rate clause is that the maximum rate clause specifies a total sum to cover the several tolls, usually three: road toll, locomotive toll and a reasonable charge for conveyance for the use of railway engines and wagons and in addition "every expense incidental to the conveyance," in other words, combined the tolls and total conveyance charges. The maximum rate clauses were generally introduced about 1845, when railway companies were already becoming themselves exclusive carriers. The maximum toll clauses were enacted for the benefit of other independent carriers than railway companies themselves. The best illustration of this type is the Great Northern Railway Act, 1850.[1] It authorized the companies by section 12 "to demand and receive, in respect of the use of their respective undertakings, any rates, tolls, and charges not exceeding the rates, tolls and charges following: that is to say ---"In section 13 it stated that the said companies may lawfully demand and receive as their maximum rate of charge for the con-

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[1] 13 and 14 Vict. C. LXI.

veyance thereof along their railways, including the tolls for the use of the railways and wagons or trucks and locomotive power, and every expense incidental to such conveyance, except a reasonable sum for loading, covering, and unloading, and for delivery and collection, and any other services incidental to the business or duty of a carrier, where such services or any of them are or is performed by the said company and except a reasonable sum for warehousing and wharfage, or for any extraordinary services performed by the said company (in respect of which the said company may make a reasonable extra charge), any rates or sums not exceeding the rate or sums following: that is to say-----"

It is not possible to divide the period according to the three stages of legislation. But generally speaking, about four-fifths of the special railway acts which were passed between 1800 and 1840 were framed without maximum toll clauses. The tolls for the use of the roadway were limited but they were very high. Railway companies were empowered to add a reasonable charge for wagons and locomotive power. From 1840 to 1844 was the transition period and the practice was less uniform. After 1844, maximum

rate clauses were always added.[1] It seems the Liverpool and Manchester Railway Act formed probably an exception.[2] Maximum road toll was specified. "For all limestone, any sum not exceeding one penny per ton per mile, etc." In addition, maximum charges for conveyance when done by the railway companies were also specified.

> "For all lime, limestone, and all sorts of dung, compost and manure and all materials for the repair of public roads and all stone, sand, clay, building, pitching and paving stones, tiles and slates and also for all timber, staves, and deals, not exceeding eight shillings per ton, etc."

A further provision was introduced that if the dividend should ex-

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1. The following table will illustrate the diverse practice:

Year	Acts of type 1823 1840"Reasonable tolls"	Maximum Toll Clauses with or without short distance terminal Clause	Maximum Rate Clause. No Terminal, Neither loading nor covering	Maximum Rate Clause Loading, unloading and covering only	Maximum Rate Clause. "Services incidental to duty or business of a carrier"
1840	1	2	-	-	-
1841	-	1	-	-	-
1842	1	4	-	-	-
1843	1	3	-	-	-
1844	4	21	-	-	-
1845		16	14	60	-
1846		3	32	121	18
1847		6	3	24	8
1848		-	1	6	2
1849		1	-	2	3

1. Hunter: Railway Rates, P. 40.
2. Liverpool and Manchester Railway Act, (7 Geo. IV, C. 49) Sections 134, 136 and 138.

ceed 10 per cent, an abatement should be made from the maximum tonnage rates of 5 per cent on the amount thereof for each one percent which the company might divide over and above a dividend of ten per cent on its capital.[1]

The above illustration shows that Parliament did not maintain a definite and uniform method in the regulation of railway charges. But in the majority of the special acts there were two sets of maximum charges to suit the different systems of carriage and to comply with the theory that a railway was open to all just as a canal. The first was the maximum tolls and the second maximum rates. Railway companies were allowed to make and collect charges within the maximum toll, when the carrying was done by independent carriers other than the railway companies. Where a railway company performed also the carrying, the charges should be within the maximum rates. Prior to the revision of the schedules of the maximum rates in 1891-92, railway companies had full control of the rates charged by them (apart from questions of undue preference and the like) so long as they did not permit their charges to exceed the Parliamentary maxima inserted in their special acts. No Court could interfere with the rates actually charged so long as they were below these maxima.

The maximum tolls allowed may be gathered from the following example:

Specimen Maximum tolls - London and Birmingham Railway Act, 1837.

"Dung, compost, manure, lime, limestone, salt and material for the repair of roads 1d per ton per mile.

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1. Report of the Royal Commission, 1867, V. 38, Pt. 1, P. VIII.

Coals, coke, culm, charcoal, cinders, building, pitching and paving stones, bricks, tiles, slates, clay, sand, ironstone, iron ore, wrought iron and castings.

1-1/2d per ton per mile.

Sugar, grain, corn, flour, dye woods, earthenware, timber, staves and deals, metals, etc.

2d per ton per mile.

Cotton and other wools, hides, drugs, manufactured goods, and all other ware and merchandise

3d per ton per mile.

It would be an almost endless task to trace out and to compare the maximum rates and the classifications in all the special acts. Fortunately this is not necessary. A general idea can be obtained from a few illustrations. The wording of the maximum rate clauses is more or less similar to that of section 13 of the Great Northern Railway Act, 1850, quoted before. An important variation in these clauses of different railway companies is that some clauses will make special mention of terminal charges and charges "incidental to conveyance" and some not. An idea of the maximum rate allowed may be gathered from the following example:

Specimen Maximum Rates - London and North Western Railway Company's Amalgamation Act, 1846.[1]

Dung, compost and all sorts of manure, lime, limestone and undressed materials for the repair of public roads, charcoal, stone for building, pitching and paving bricks, tiles, slates, clay, sand, iron ore, ironstone.

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[1] 9 and 10 Vict. C. 204.

Up to 50 miles	1-1/2 d per ton per mile
Beyond 50 miles	1-1/8 d per ton per mile
Iron not damageable	
Up to 50 miles	1-1/4 d per ton per mile
Beyond 50 miles	1 d per ton per mile
Damageable iron, sheet iron, hoop iron and all other similar descriptions of wrought iron	
Up to 50 miles	2 d per ton per mile
Beyond 50 miles	1-1/2 d per ton per mile
Sugar, grain, corn, flour, hides, dyewoods, Manchester packs, earthen ware, timber, staves, deals, metals, hardware in packages or cases, nails, anvils, vices and chains	
Up to 50 miles	2-1/2 d per ton per mile
Beyond 50 miles	2 d per ton per mile
Cotton and other wools and manufactured goods	
Up to 50 miles	3 d per ton per mile
Beyond 50 miles	2-1/2 d per ton per mile
Fish, feathers, canes, cochineal, furniture, hats, shoes, toys, and all other articles, matters and things	
Up to 50 miles	3-1/2 d per ton per mile
Beyond 50 miles	3 d per ton per mile

The following table[1] will give some idea of the maximum rates authorized in the principal acts of the several companies named.

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[1] Report, Royal Commission on railways, 1867, P. LXX. For further illustration see PP. XII-XIV of the same report. Sections 304-315 of the Lancaster and Carlisle Railway Act, were given "to afford some idea of the manner in which the tolls and charges were regulated by private Acts at that time."

Articles	London & South Western	Great Eastern	Great Western	Great Northern	London & Northern	Midland
	d	d	d	d	d	d
Dung, Lime, Bricks Coal, Pigiron, Iron Ore	1	1-1/8 to 1½	7/8 to 2	¾ to 1¾	7/8 to 1½	1 to 2
Sugar, Corn, Earthenware Timber, Iron Castings, Iron	3	2 to 2½	2 to 3	1¾ to 2½	1½ to 2½	2 to 2½
Cotton, Wools, Dungs, Manufactured Goods	3	2 to 2½	2½ to 4	2½ to 3	2½ to 3	3 to 4
Fish, Feathers, Furniture, Clothing, Silk	5	4	3 to 4	3 to 3½	3 to 3½	3 to 4

The classification of goods in the special acts[1] usually comprised four or five groups. The goods classified and enumerated were between forty and sixty. All other articles were chargeable as "other articles, matters or things", in the highest class. In classifying goods no special distinction was given to articles on such matters as the method of packing or average size of consignment. No uniform classification was made applicable to all the railways; almost every railway company had its separate classification.

The maximum rate clauses were, therefore, of a very imperfect character. The scale of maximum rates was by no means uniform and indeed no uniformity was sought. There was not only great diversity in the amount of tolls for the use of the line and in the charges for services when railway companies became exclusive carriers, but also an imperfect enumeration of articles and often

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[1] Report, Select Committee, 1882, V. 13, P. VII.

incomplete classification of merchandise traffic. In those early days the maximum rate clauses represented all of the law for the control of the actual charges of railway companies. The intention of Parliament in enacting the maximum rate clauses was to protect the public from exorbitant charges. When a railway company exceeded its power and made a higher charge than the maximum allowed, its right could be questioned. But this protection for the public against exorbitant charges was nominal and ineffective. It was not hard for a railway company to comply with the Parliamentary restriction of making the charges within the maxima. There were many reasons but we shall examine here only a few which will show how the regulation of railway rates through maximum rate clauses failed.

In the first place the maximum rates thus fixed by Parliament in the special acts were found in all cases above and in some cases greatly above what ought to have been charged. In fixing the maxima, Parliament followed the prevailing charges made by canals and turnpikes. Parliament had yet no idea that railways with new motive power could afford to carry much cheaper. It did not take into consideration or make allowance for the possible improvements in railway equipment and machinery, in the technical and economic administration of the system, nor for the development and increase of traffic, the growth of population and like factors that work towards the reduction of the cost of production. The maxima appeared too high, in the lapse of time, and they became useless and ineffective for the purpose for which they were fixed. The railway companies found that it was not to

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[illegible]

[illegible]

[illegible]

their own interest to charge such high rates as allowed by the Parliamentary maxima; they voluntarily made their charges far below the maximum rates. The purpose of fixing these maximum rates was to serve as a check to the possible exorbitant charges of railway companies but, as they were fixed too high, it could not be of any use.

In the second place there was the greatest diversity in the scale of charges. The mode of charging was different on different railways. No two railway companies had the same scale of charges. The public had no easy means of finding out an exorbitant charge, even when they were so charged. The railway companies could easily conceal it and the public could not find out what should be the charge. Mr. Bigg, while compiling the special railway acts of 1846, collected what might be called the maximum and minimum maxima charges fixed and allowed by Parliament. These charges show admirably the diversities in the scale of maximum rates allowed.[1]

Animals, per mile	Lowest Maximum d	Highest Maximum d
Horses	3	6
Cattle	1	5
Calves and pigs	0-1/4	1-3/4
Sheep	0-1/4	1-3/4
Carriages, per mile	2	9

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1. Herapath's Railway Journal, 1848, P. 641.

Goods per ton per mile	Lowest Maximum d	Highest Maximum d
Manure	1	3
Coal	0-3/4	5
Corn	1-1/4	7
Cotton and general Merchandise	2	7

Passengers per mile	Lowest Maximum d	Highest Maximum d
First class	2	6
Second class	1-1/2	4
Third class	1	2

These diversities were all contained in the special acts passed in the year 1846. Mr. Biggs[1] remarks, "had these charges been made at widely different intervals as in the beginning of railways, there would be some excuse; but they are all acts of one time, of last Session and therefore shut out all excuse for inequality of experience."

In the third place, the classification of merchandise traffic were incomplete and full of diversities. No uniformity in classification or rating was observable either as between the acts of different companies or among the various special acts of the same company.[2] Almost every railway company levied rates under special acts applicable to different portions of its system and in some cases reference must be had to more than fifty acts to determine

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[1] Herapath's Railway Journal, 1848, P. 642.
[2] Parliamentary Papers, 1881, Vol. L.XXXI (134) Return of Maximum Rates of Charges.

the various rates the company was authorized to charge.[1] Coal was classified lowest in one of the three Midland Railway acts with a maximum toll of one penny per ton per mile, but in another act in a different class with a maximum toll of three half-pence per ton per mile. Grain was classified in one of the acts next to the lowest class with the maximum toll of three half-pence but in the other two acts, it was placed one class higher with a maximum toll of two pence. In one of the thirteen Great Western Railway Acts rod and pig iron and iron ore were classified in one class with a maximum toll of half penny per ton per mile but in another with the toll at three half pence per ton per mile. Grain was placed in one of the acts next to the lowest class with a maximum toll of one penny; in another one class higher with a maximum toll of two pence, and in a third act with the toll at two pence three farthings per ton per mile. In the Midland Railway Acts there were generally four classes for merchandise and minerals; in the London and South Western Railway Acts, three; North Eastern Railway Acts, five, and Lancashire and Yorkshire Railway Acts, eight. But the Acts of the Newport, Abergavenney and Hereford Railway on the Great Western Railway system and the Cannock Chase Railway on the London and North Western Railway system gave only two classes. In one of the thirteen Great Western Railway Acts, goods were divided into eight or nine classes but in others only four or five classes. Of the five London and North Western Railway Acts, some had eight and some three or four classes; of the Great Eastern and Great Northern Railway Acts some five and some

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[1] Report, Select Committee, 1882, V. 13, P. VII.

four classes. The same diversity in classification was true of the classification of animals and live stock. Generally there were four classes but it is not uncommon to find only three classes. The maximum rates as given in each class were by no means uniform. For instance, the maximum rates allowed per horse, mule, ass, etc. per mile varied from 3 d to 6 d and for grain, flour, sugar, etc. per ton per mile varied from 3 d to 6 d and from 2 d to 7 d respectively on the London and North Western Railway System.

In the fourth place no important railway company was governed by one special act and one set of maximum rates. The maximum toll and maximum rate clauses were scattered through the numerous special acts obtained by each company. When such railway companies consolidated, or combined with, or were leased to, another railway company, the special act of each railway company was still in force. The Midland Railway Company had its power of levying tolls scattered over three acts; the London and North Western Railway Company, five Acts; the Great Eastern Railway Company, five; the Great Northern Railway Company, nine; and the Great Western Railway Company, thirteen.[1]

According to the "Return of the Maximum Rates of Charges which the railway companies of the United Kingdom were authorized to make for the conveyance of passengers, animals and goods, etc. on railways,"[2] the Midland Railway Company possessed its power under 68 different acts; the London and North Western Railway

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1. Report of the Royal Commission, 1867, PP. XXVIII-XXXII.
2. Parliamentary papers, 1881, Vol. LXXXI (134). See under the name of each railway company.

Company under 109 Acts; and the Great Eastern Railway Company under 100 Acts. Take any railway company in the Return and it will be found that a railway company was governed in its maximum rates by at least a dozen special acts. Under such conditions a railway company could easily evade any detection of having charged illegal rates. The situation was complicated to such an extent that it was absolutely impossible for an ordinary shipper to ascertain why he should pay this amount for his goods, The multiplicity of special acts dealing with rates or charges on the same railway system was of a great evil.[1] Only in a very few cases did Parliament try to bring all the powers as to rates and tolls into the amalgamation act, as in the case of Lancashire and Yorkshire Railway. In nearly all cases when railway companies sought amalgamation or combination maximum rate clauses were either left as they were before in their separate special acts, or were greatly modified as embodied in the amalgamation act, without repealing the previous ones. Parliament sometimes took opportunity to insert a clause forbidding any alteration of what the railway company were authorized by their acts to demand from the public.[2] In general one finds that after amalgamation maximum rate clauses pertaining to the power of making charges became much more complicated instead of being made simpler.

Besides the complications shown above, many other technical distinctions made the rate situation still worse. These distinctions arose not from the complications in the maximum rate clauses

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1. Report, Select Committee, 1882, Vol. 13, P. XV.
2. Report, Board of Trade on Railway and Canal Bills, 1860 (176).

[illegible]

but from the actual practice of making railway charges. They increased, however, the ineffectiveness of the maximum rate regulation just the same. There were rates which would vary according to the arrangements made by the company with every other company over whose lines the goods would be carried. These were the equal mileage rates when the principle of equal mileage was adopted. There were again the special rates charged in the more numerous cases where sea or other competition induced the railway company to charge lower rates. There were also a class of special rates still less reducible to principles or rules capable of general statement where the company in consideration of quantity, regularity or constant custom or for other reasons, made specially favorable bargains with particular shippers. In addition to all these, there were the last but not the least complicated questions of charges for terminals and for services incidental to conveyance, of rebates and of private sidings. These questions were left almost entirely to the discretion of the railway company. As a consequence of all these complications, the rates actually charged in the case of all the great railway companies were numbered by millions. And they were constantly varying with the varying circumstances of railway trade policy.[1]

The previous analysis of how the regulation of railway rates through maximum rate clauses failed must not be understood to mean that the system of railway rates should be based on a uniform or tapering ton-mile charge. The regulation through maximum rate clause was incomplete. It did not cover all the systems of mak-

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1. Report, Joint Committee, 1872, P. XXXVIII.

ing railway charges. Schedule of maximum rates and classification of merchandise traffic were too crude. They differed so much from one to another of the various railway companies that the purpose of their enactment was entirely defeated. The reasons for the failure of the maximum rates were two, as we have said. The first was that the scales were so complicated that the shipper had no way to know what amount he should be charged, and the second was that the scale was so high that the railway companies could make out whatever amount they desired.

Although the maximum rate regulation was a total failure and the cry for stricter legislation was heard everywhere, yet Parliament failed to revise the classification of merchandise traffic and the schedule of maximum rates till the passing of the Railway and Canal Traffic Act in 1888. Railways in the meantime had full control of these rates till the passage of the new classifications and schedules in 1891-92.

It may be asked why Parliament did not revise the schedules of maximum rates and classifications of merchandise traffic much earlier. Among the various reasons which may be assigned, the chief and the most important was certainly the respect for the rights of private property. In the reports of the Select Committee and during the debates before the House the rights of private property were never disregarded. Arguments on this basis naturally had much more effect on the hearers in the early days of railway existence as the experiences of those pioneers were still fresh in their minds. No doubt this was the chief reason for the absence of a restrictive legislation in those early days. Every-

body knew that railways fought for their own existence without any assistance from their government. The railway system had its origin in the enterprise of individuals in the several localities; these efforts were not fostered by the legislature as projects of national concern, but were treated as projects undertaken for the private profit of promoters, which might be sanctioned for the public advantage.[1] In other countries like Belgium and France, the government had a hand in the building up of almost every line; hence government interference to some extent at least might be justifiable on this ground, but in England it was different. Where the railway company assumed from the very first the risks and adventures of a new industry, it should also be entitled to all the later profits. The first adventurers in the great lines which were unfertaken before the practicability and profitableness of railways were established should be entitled to large profits as the legitimate rewards oftheir enterprise and sagacity.[2] Mr. Muntz[3] in the course of a short conversation which took place on the third reading of Lord Seymour's Bill[4] in the House of Commons, said that he could not forget that a very short time had elapsed since the promoters of railways were ridiculed and the idea scouted that they would even reap any remuneration for their outlay. Besides, there were canal shares which were originally worth ₤100 but subsequently rose to ₤3,500 and nobody ever complained. The Railway Times, the most influential

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1 . Report of the Royal Railway Commission 1867 Pt. 1. P VII
2 . 2nd report 1846 P XVII
3 . Railway Times 1840 vol. 3 P631B
4 . See Chapter V

railway journal of the time stated positively that they could see on any principle of justice that railway proprietors could be deprived of that which they, by their industry, enterprise and capital, created. "On no principle of English law or custom can the State interfere with property granted to private parties by Act of Parliament." Most of the witnesses, while testing before the Select Committees depreciated all attempts to regulate with exactness the scales of charges; they all contended that the legislature should concern itself with fixing only the maxima. The invested interests were so powerful that it took many decades to bring the railways well under regulation.

The Parliamentary schedules and classifications in the special act being of no working value, a more complete classification of merchandise traffic and a more uniform and more complete schedule of charges were necessary to the conduct of traffic. We will now examine what the railway companies did for themselves in the matter of classification of merchandise traffic and schedules of charges. The need of more complete classifications and schedules was evident to all railway companies. Firstly, the enumeration of the articles was not sufficient to meet the requirements of trade; in such cases there was no basis of making charges and of apportioning them which would be fairly acceptable to all parties concerned. Secondly, since the same articles were usually classified differently with different maximum rates in the different special Acts of the different railway companies, inextricable confusion and difficulty sometimes resulted in the apportionment of the total rate of charges. A working classification was, therefore, urgently

needed.

This need was worked out and developed by an association of the railways called the Railway Clearing House, which was founded in 1842 by Mr. Morrison an audit clerk of the London and Birmingham Railway,[1] being incorporated in 1850 by an act of Parliament. The great object of its promoters was to give the traffic operations of the various railway companies in the conduct of through traffic the simplicity and ease attaching to the management of a single establishment. The primary object was to send not only passengers but goods "through" without change of carriage or wagons. The fares or rates collected were required to be forwarded daily to the Clearing House. The accounts were there compared, balances struck, and received or paid as the case might be, in much the same way that the business of the city Clearing House banks was transacted.

The application of the Clearing House system to railway traffic was chiefly due to the effort of Captain Huish, the able manager of the London and North Western Railway Company. The chief difficulty with which the railway company had to contend was the absence of a certain classification of the goods. Gradually, as communications between railway companies became more frequent, recognized classification of goods and scales of rates applicable under ordinary circumstances came into force. Such classifications and schedules were accomplished partly through special

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1. Journal of Royal Statistical Society of London, 1848, P. 322, P. 338. Harding, W: Progress of Railway systems. Railway Times, 1847, P. 1319.

conferences and partly through general practice. Important conferences were regularly held in the Clearing House to promote uniformity in operation and in making charges. Thus emerged two important conferences which had the most to do with the competitive rates: "the English and Scotch Traffic Rate Conference" and "the Normanton Conference." The first fixed a scale governing the traffic between England and Scotland; the latter a scale governing places within England and other places which were not governed by the scale of "the English and the Scotch Traffic Rate Conference." The cross-channel rates between England and Ireland were controlled by an "English and Irish Traffic Rate Conference." The schedule of charges was so worked out that the rate for goods in each class in no case exceeded the Parliamentary maxima allowed upon any article in that particular class. At last for the convenience of the railway companies themselves and simply a fair basis and guide upon which rates required might be easily arranged, all railway companies began to adopt the scale of charges and the classification of goods, later known as Railway Clearing House classification.

The classification was drawn up by the Railway Clearing House Committee. A copy of the classification was attached to the report of the Royal Commission of 1867.[1] The goods were divided into seven classes; a mineral class, a special class and five ordinary classes. Goods in the mineral class were to be carried at station to station rates and must be loaded and unloaded by owners. They were to be conveyed at owner's risk and in quanti-

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[1] Report, 1867, Vol. 38, App. CP.

ties of not less than four tons (2240 lbs.), otherwise being chargeable at special class rates. Goods in the special class were also to be carried at station to station rates but in quantities of not less than two tons. The rates for goods in classes 1 to 5 generally included collection and delivery at the stations. In 1867 the classification included between 1300 and 1400 articles but before the revision in 1891-92 it had grown to 4000 articles.[1] Revision of the classification took place periodically so as to bring it up to the requirements of the day. When a railway company was desirous of making a special rate for some particular article included in one of the five classes, it first made an agreement with the other railway company over whose line the article was to pass, and then notified the Railway Clearing House. After 1842 and prior to 1892, railway companies among themselves adopted this uniform classification embracing almost every article of trade. They voluntarily submitted themselves to its control but they possessed full power to modify it under the only condition of securing agreement among themselves. This classification had been repeatedly recommended by the various Select Committees and the Royal Commissioners on Railways to be adopted as the basis of the Parliamentary classification; but this was not realized before the passing of the Railway and Canal Traffic Act in 1888.

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1. Quarterly Journal of Economics, 1894, Vol. 8, P. 289.

CHAPTER IV.

Competitive Adjustment of the Early Railway Rates.

The enactment of the maximum rate clause in the special railway acts was only one of the two principal means to which Parliament resorted in those early days in the regulation of railway rates. The maximum rate clause might prevent a rate from being fixed too high but it could neither induce the railway companies to make lower charges nor could it compel them to offer better facilities. In the actual regulation of railway rates Parliament depended more on free competition than on any specified restriction in the special acts. Competition had been a salient factor in the regulation of all private industries. That competition and freedom were the essential factors in the development of private industries was the strong belief of the time. Railways came and were developed in England as the result of individual enterprise without any governmental or Parliamentary assistance. Both in England and in America competition has always been depended upon as an important, if not the only efficient factor in protecting the public against the evils of railway monopoly. It has been said that in America, the system is "regulation in competition", and in England, "competition in regulation."

Parliament in the regulation of railways has never fully disregarded competition as a factor in the control of railway rates.[1] In the early period the prevailing practice, following

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[1] This statement is practically true even to the present day so far as legislation is concerned; for besides the legislation of undue preference, reasonable rates and revised classifications and maximum rates, the English public still depend upon competition for controlling the rates.

the prevalent belief, was to open railways both with respect to construction, use and operation to the free competition of all. It was the current opinion that Parliament had done its duty of protecting the public when it had successfully made railways free to the public. At a later period when the evils of free competition began to be more widely felt, no one advocated total abandonment of the principle. Mr. Gladstone, who attempted to bring out many drastic reforms and who must have foreseen the ultimate failure of competition, used in his report the following words[1]: "the power of encouraging, or if need be, of creating competition, even although its remedy thus to be supplied might be partial and must be costly, is nevertheless an engine of great capabilities in the hands of the State and one which might be used to practical advantage." In Parliament there was never any lack of staunch supporters of the principle of free competition, using every means to argue against government interference in private industries, whenever any important railway Bill was brought up for discussion. Strong evidence condemnatory of competition was brought before the Select Committee of 1844 by eminent authorities, but in Parliament, Messrs. Roebuck, Wallace and others were urging a further and fuller trial of competition.[2]

From 1800 to 1854 competition reigned supreme. Some writers characterize this period as the "laissez Faire" period. But this term is misleading, for there was the regulation through the

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[1] Third Report, Select Committee, 1844, P. 4.
[2] Report, 1844, Minutes of Evidence; see evidences given by Messrs. Laing, Swift, Glyn, Hudson, Cardwell, Han. 1844, V. 72, PP. 232-256; 1845, V. 77, PP. 246-298.

maximum rate clause. It is true that the maximum rates lacked working value and the regulation was but nominal. Railway companies possessed full power to vary their charges within the maxima, and they were fixed so high that railway companies could fix their charges at any amount they desired, if there was no competition to fear.[1] But railway companies were not entirely free and the period could not be properly called "Laissez Faire." After 1854 the policy of Parliament was to maintain what was left of competition - to restrict amalgamation, to compel free exchange of traffic, and to prohibit secret preference. One may say that Parliament depended on natural competition and legislative control of railway rates in about equal measure.

The history of railway competition in England is very instructive. Lately important contributions have been made by a few English scholars on the subject of combination and amalgamation among English railways.[2] We will confine ourselves here to examining briefly the nature and the effects of competition on the

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[1] In places where there was no competition rates were actually much higher than in places where there was no competition.

[2] The important contributions are first, "English Railways, their Development and their Relation to the State," 1915, by Edward Cleveland-Stevens and second, "Combinations among railway companies" by Robertson. The titles of the first book is somewhat misleading. The author tells in the Introduction that the book "aims at presenting a detailed historical account of consolidation of English Railways up to the year 1900." Up to the present time this book is the only important contribution in the English language to the historic account of railway consolidation in England. The second deals with the development of the English trunk lines up to 1844. The latter subject has also been treated by Mr. Jackman in his "Development of Transportation in Modern England" 1916, but the history of railway development was given only up to 1854.

general control of actual railway charges.[1]

In ordinary business, competition keeps prices normal. Parliament thought that competition would do the same with railway charges. For this purpose various forms of competition were successively tried with more or less good results. The first form of competition - competition for the free use of railway lines - was the oldest and the least effective for its purpose,[2] as we have seen. Next Parliament tried competition among railways. Competition among railways could be brought about in three ways[3]: first, by sanctioning the construction of parallel lines, second by competitive lines, and thirdly by giving the right of free construction of a railway line to any individual who cared to apply. Through these means, there was severe competition for traffic. As the construction of any new line might bring in more severe competition, railway companies competed generally with one another in making proposals to Parliament for new lines with little regard to the needs of the country. This policy was, of course, detrimental both to the public and to the railway companies. It meant great national waste; it also created much unrest. Rate wars resulted without benefit to the public. It was not long after this policy became effective on a large scale that its evils were manifest everywhere. The various Select Committees and Railway Commissions reported against it, The Select Com-

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[1] The remaining part of this chapter should be read together with Chapters II, IV, VII, IX, and XI in Cleveland-Stevens: English Railways, their Development and their Relation to the State.

[2] Second Report, Select Committee, 1839, V. 90, P. VI; third report, 1840, P. 3. See also the second chapter.

[3] Han. V. 77, 1844, PP. 250-251.

mittee of 1846 stated that "by constructing two lines where one would suffice, there is not only an unnecessary outlay of capital, but a waste of a portion of our territory. Besides, as the cost of conveyance diminishes with every increase of traffic, competing lines, by dividing the traffic, add to the cost of conveyance on the separate lines."[1] Furthermore the policy of sanctioning competing lines kept the existing railway companies in a constant state of alarm and often subjected them to much trouble and expense in watching and resisting the proposals for competing lines.

The third phase of competition - competition between railways and canals, or water routes - was much more effective and much more important in the forties. The canal system was thoroughlyestablished when the railway era commenced. According to the report of the Select Committee of 1846 there were in 1846 about 2500 miles of canals in operation and they afforded the exclusive means of conveyance of heavy goods and merchandise.[2] Water competition was the more effective because of the geography of the country. No place in England is farther than 90 miles from the sea. Because of the long broken coast line and the great number of ports, the competition of water carriage was widely felt. A canal or a river is a highway which cannot be closed and which will admit any number of competing carriers. Boats were readily built, and profits upon them were open to all.

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[1] Second Report, Select Committee on Railway Acts Enactments, 1846, PP. IX-XI.

[2] Second Report, Select Committee on Railway, Amalgamation, 1846, P. III; Porters gave in the "Progress of the Nation", P. 304, 2200 miles of navigable canals and 1800 miles of rivers in England in 1847.

Where there was a demand for water carriage, the supply was sure to appear.[1] The effect of water competition was chiefly in the direction of the lowering of charges. There were few parts of the country which had not derived some material advantage from the competition between the railway and the canal.[2] The effect was not simply confined to the traffic between the two places which communicated with each other by water, but it extended to the cost of carriage of the same description of goods to the same market from other places. Consequently the competition of water carriage was an important element in determining railway rates, with a large indirect as well as direct influence. This was much more effective in the early days when the canal companies were all independent.

Railway companies, being desirous of eliminating water competition, succeeded gradually by various methods in reducing the formidable competition to an extent such that it was no longer harmful. The most important method by which railway companies defeated the competition of canals was the purchase of important links of the canal system and the consequent discouragement of through traffic.[3] Sometimes this was effected by private arrangement. The railway companies would raise the tolls of these links to the utmost limit allowed by law, thereby rendering it

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1. Statistics of British Railway, P. 17; Report of Joint Committee, 1872, V. 13, P. XXIX.
2. Second Report, Select Committee on Railway Amalgamation; 1846, P.111.
3. Birmingham Canal and Huddersfield Canal were good illustrations. See report of Joint Committee, 1872 V. 13, PP. XXI-XXII. Railway Statistics, 1839, P. 16. Fifth report, Select Committee, 1853, P.11.

impossible for the independent canal carriers to maintain their through traffic in competition with the railways.[1] When the tolls were fixed by an Act of Parliament at a renumerative rate the railway companies would in such case neglect the upkeep of the canals. It was stated that the railway companies not only did not make improvements but actually did damage by neglecting repairs, by closing the canals at night or by failing to supply water.[2] Parliament in such cases made special provisions compelling the railway companies to maintain the canals in an efficient working state; to keep them free and open for traffic and even to enable other canal companies to make through rates: but these provisions were ignored.[3] With few exceptions the railway companies felt little desire to do more than their barest legal duty in maintaining these canals.[4]

On the part of the canal companies the lack of improvement and foresight also hastened the elimination of their competition. On the other hand railway companies were under great advantages. They derived much larger income from passenger traffic. Their far larger capital and resources made competition less harmful; and their possession of the important canals carried these advantages yet farther.[5] The result was that in many cases the canal companies by way of saving their shareholders either offered their properties to the railway companies or proposed ar-

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1. Second Report, Select Committee on Amalgamation, 1846, P. IV.
2. Report, Joint Committee, 1872, Vol. 13, P. XXII.
3. Report, Joint Committee, 1872, V. 13, P. IX.
4. Report of the Royal Commission on Canals, 1909, P. 77.
5. Second Report, Select Committee on Railway Amalgamation, 1846, P. IV; Report of Joint Committee, 1872, P. XX.

rangements under which competition should cease. It was often difficult for Parliament under these circumstances to refuse sanction for such amalgamations when the shareholders were alleging that the only way of saving their property was to let a railway company buy it.[1] Canal companies were further weakened by their disjointed state and the different systems under which they were charging for their operations.

The chief transfers of canals to railways had mostly been effected by 1847. According to an estimate in 1882 the railway companies had acquired 78 miles under the acts of 1845, 774 miles under acts of 1846 and 96 miles under acts of 1847.[2] In 1865 there were nearly 4000 miles of water and river communication in England and Scotland and of this about one-third had been amalgamated with different railway companies.[3] In 1872, 1544 miles of canals in England and Scotland were held, it was said, by railway companies, of which 1300 were so held in perpetuity. In spite of the recommendations of the various Select Committees and the efforts of Parliament, it was not possible to maintain this competition and far less possible to restore what had disappeared. Before 1854 Parliament passed three Acts for the purpose of strengthening the canal companies and maintaining their competition. After 1854 canals were regulated together with railways in the Railway and Canal Traffic Acts. Two of the three acts before 1854 were passed in 1845: the first[4] giving the canal companies the necessary power to vary their tolls, and the sec-

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[1] Report of Joint Committee, 1872, V. 13, P. XXII.
[2] Report of Royal Commission on Canals, 1909, P. 77.
[3] Report, Joint Committee, 1872, V. 13, P. XX.
[4] 8 and 9 Vict. C. 28.

ond[1] enabling the canals to become carriers of goods upon their canals and to make working agreements with or to lease their canals to other canal companies. Two years later, in 1847, the power to borrow money for the above purposes was given to the canal companies by another act.[2] These attempts of Parliament to preserve the independence of the waterways and to strengthen their competition with the railways were too late and of little effect. Moreover, as was pointed out by the Select Committee of 1846, some important canals, originally independent, were by private arrangements practically under the same control and management as the railway companies, so that all the evils of amalgamation might be produced without affording opportunity for Parliamentary inquiry.[3] The following recommendations originally made by the Railway Department of the Board of Trade in their report of 1845 and quoted by the Joint Committee in 1872 will show how they sought to remedy the evil:[4]

1- "That upon amalgamation the maximum tolls and rates be revised and reduced."

2- "That strict regulations should be made for maintaining the canals in an efficient state of repair and for the free and open use to all the public."

3- "That no inland navigation shall be placed under the control of a railway company and leases shall not be renewed."

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1. 8 and 9 Vict. C. 42.
2. 10 and 11 Vict. C. 94.
3. Report of Joint Committee, 1872, V. 13, P. VIII.
4. Report of Joint Committee, 1872, V. 13, P. IX, XXIII.

4- "That the utmost facilities shall be given for the amalgamation of adjoining canals with one another or with adjoining inland navigations."

5- "That the owners of any canal shall have power to make a through toll or rate."

The policy of Parliament was to create and to maintain competition for the control of railway rates. We shall now turn to examine the attitude of the railway companies. The one tendency of all the railway companies in the early days was to seek combination - to combine among themselves and to combine with canal companies. The reason for this is very obvious. Combination was sought not for the sole purpose of checking competition, but often for the advantages of greater efficiency of operation which could be derived from it. The average length of railways prior to 1840 was said to have been only 15 miles. The line from London to Liverpool belonged to three railway companies and the same was true with the line from Bristol to Leeds.[1] In 1843 the number of miles of railways opened in England was about 2100 and they were owned by 70 railway companies, giving an average of only 30 miles for each company.[2] In 1865 there were 11,451 miles of railroad under the control of 78 railway companies, giving an average of 150 miles per company. The longest line open in 1843, controlled by one railway company, was 118 miles in length; but in 1872 the London and Northwestern Railway Company controlled 1,274 miles; Great Western Railway Company, 1,256 miles; Midland

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1. Report of the Royal Commission, 1867, P. XIX.
2. Ibid, P. XXXII.

Railway Company, 700 miles and the Northeastern Railway Company, 1,205 miles. Railway combination, or amalgamation as it was called in England, was a natural process of railway development. The lines of the early railway companies were too short. Interchange of traffic was much impeded - especially at the points of junction with rival railway companies.[1] There was competition, but the public could not derive the benefit of a continuous and integral line in the hands of one single company for through traffic. However, amalgamation, though natural in railway development, might not have come so rapidly in England, if it had not been hastened by the legislative policy of Parliament. In the railway mania of 1844-46 when the construction of competitive lines was sanctioned on a large scale, amalgamation was also going on very rapidly.[2] In the year 1846 alone there were 45 special railway acts,[3]

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[1] Third Report of Railway Commission, 1850, P. 7.

[2] Progress of Amalgamation, 1840-1850:

Year	Total number of acts passed	Including		
		Acts for new lines	Acts for amalgamation	Acts for purchases and leases
1840	24	2	1	1
1841	19	2	0	0
1842	24	6	0	1
1843	24	10	0	1
1844	49	37	3	7
1845	121	94	3	15
1846	272	219	20	19
1847	194	212	9	20
1848	85	37	5	7
1849	35	11	2	4
1850	37	5	1	5

Cleveland-Stevens, English Railways, their Development and their Relation to the State, P. 25; see also Report Royal Commission, 1867, Appendix E. K.

[3] Herapath's Railway Journal, 1847, P.1119.

authorizing either an increase of capital or an amalgamation with another company. Between 1860 and 1872 the number of Bills introduced to carry out amalgamation was 258 - of which 187 passed, adding 5,316 miles to the system of amalgamated railways. This was about a third of the entire railway mileage.[1] On Dec. 31, 1870, the railway mileage of England and Wales was owned as follows:

	TOTAL MILEAGE		MILEAGE OWNED BY CHIEF RAILWAY COMPANIES	
	Number of Railway Companies	Amount of Mileage	Number of Railway Companies	Amount of Mileage
England	204	11,043	16	9,572
Scotland	35	2,519	5	2,468
Ireland	42	1,975	8	1,597
Total	281	15,537	29	13,639

Twenty-nine out of the 281 railway companies held more than four-fifths of the entire railway system of the United Kingdom.

In order to understand fully the significance of railway combination upon railway rates, it is necessary to analyze the various forms of combinations and the methods that were used by the railway companies.[2] Generally speaking there were six forms of railway combinations, Their common end and purpose was to re-

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[1] Economist, Feb. 17, 1872, P. 197; Report on Amalgamation, 1872, Appendix Y.

[2] Report, Joint Committee, 1872, V. 13, PP. XXIV-XXVII; Report, Departmental Committee on Railway Agreements and Amalgamation, 1911, PP. 14-16; Robertson: Combination among English Railways.

duce competition, to maintain rates, and to hold traffic. The simplest form was an arrangement for equal charges, and, in a few cases, for equal speed. The second was an agreement with reference to the pooling or division of receipts from traffic between two or more companies. The profits might be divided in certain fixed proportions with or without reference to the question whether the traffic had actually travelled over the line or by the train of the one company or the other. These two forms could be carried into effect by the railway companies without reference to Parliament and even without notice to the public.[1] The third was the working agreement. The purpose of the working agreement was the use and working of the railways and the fixing, collecting and apportionment of railway charges. Railway companies had, by their special acts, the right to make working agreements; but under the Clauses Act, 1863, working agreements were required to be approved by Board of Trade, and under the Regulation of Railways Act, 1873, by the Railway and Canal Commission.[2] The fourth form of railway combination was that effected by lease. The management of a railway company was put into the hands of another railway company, the owning company being only the recipient of rent. This form of arrangement had the advantage of putting the work of smaller and weaker lines into the hands of larger and more powerful companies, but it was also attended by the disadvantage that, if the latter railway company looked forward to amalgamation or purchase,

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1. Joint Committee, Report, 1872, Vol. 13, P. XXV.
2. See the Railways Clauses Act, 1845 and 1863, and the Regulation of Railways Act, 1873.

it might be to its interest in the meantime to keep down the traffic and profits and thus depreciate the concern in order to purchase it at a lower price.[1] The fifth form of combination was working union. The existence of each company was maintained and the finances of the parties to the union remained separate or were separately provided for. The sixth form was amalgamation. The latter differed from the former in being the most complete combination, involving the absorption of one company by another and a fusion of capital as well as a union of administration. In this latter form of combination not only was all actual, but also all "potential" competition between the railway companies entirely at an end. The last three forms of combination required Parliamentary sanction.

The economic advantages arising from the various combinations were many and obvious.[2] Viewed from the standpoint of revenue, of operation and of management, combination was highly commendable. Through combination, efficient management of the line and full utilization of its equipment was much more easily secured. By

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1. Joint Committee, Report, 1872, V. 13, P. XXVI.
2. The benefits of combination were admitted by the Select Committee on railway amalgamation in 1846. "The benefits arising from it, if conducted within proper limits and under judicious regulations are indisputable." The railway companies were enabled to conduct their operations with less expense to themselves and consequently with diminished charges to the public. Amalgamation would lead to better arrangements and more efficient control and thereby to greater speed and at the same time to increased safety to life and property. It would "enable companies conjointly to provide that increase of accomodation for the public at their terminal stations and in their general establishments which many of them could not separately afford."

greater economy in the distribution of employees and of working stock, a large saving could be easily effected. The traffic would be much more regular and the revenue steadier. What was saved in working expenses might be devoted to other imrpovements and new construction, and would cause thereby further increase in traffic. Combination would tend also to promote public convenience; through bookings without change of carriage could more readily be made and the meeting of trains at suitable hours of arrival and departure could be easily arranged. Instead of diverting the traffic to the disadvantage of the public by the rival railway company, the traffic would go by the shortest route. On the whole not only would the railway companies be benefitted by combinations but the public would gain largely by the harmonious consolidation of short and actually inefficient lines.[1] The original desire for combination was based on the ground of economy in the conduct of traffic. Many amalgamations were the result of financial difficulties. It was only at a later period that combination was adopted as a matter of offensive and defensive policy to enable the combined company to compete more powerfully with their rivals.

What effect the combination had upon rates is hard to say precisely. Both Parliament and the public were afraid of the monopoly; the combination was therefore disliked and discouraged. The constant plea was that the company by defeating competition with combination would make their rates and charges exorbitantly high. This dread of railroad monopoly and high charges was most manifest during the early days. The Select Committee on railway

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[1] Fifth Report, Select Committee, 1853, PP. 3-4.

amalgamation,[1] of 1846, stated that the inducement to low charges would be noticeably diminished and possibly done away with, if a system of amalgamation were to be extensively adopted. Amalgamation must necessarily produce a tendency directly opposite to low rates and charges. The committee further stated that past experience afforded sufficient and convincing proof that while in some instances amalgamations of the railroads were followed by diminished rates of carriage and increased accomodation, in others the results were directly the reverse.[2] It seems that this fear of high charges was no longer existing in 1853 when the five reports of the Select Committee on railway amalgamation were made. Among the reasons why railway amalgamation should be discouraged, as given by the Select[3] Committee of 1853, were the following:

1. A concern might be too large to be properly managed.
2. A powerful company might oppress smaller ones.
3. It might divert traffic into an unnatural channel.
4. It might neglect or injure one part of its district in order to underbid a rival in another.

The curious part was that no illustrations of the actual raising of charges as the result of amalgamation were given by any of the Select Committees. On the other hand, there were instances of reduced charges. So what was feared never fully took place; the railway companies following their own interest re-

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1. First report of Select Committee on Railway Amalgamation in 1846, P. 4.
2. Ibid.
3. Fifth report of Select Committee on Railway Amalgamation, 1853, PP. 3-12; Report of Joint Committee on Railway Amalgamation, 1872, V. 13, PP. X-XII.

sorted more to reduction than to increase of the rates. The original North Eastern Railway was composed of 37 lines, several of which competed with one another. Before their amalgamation they had generally high rates and low dividends. But after the amalgamation the North Eastern Railway had the lowest rates and the highest dividends of any large railroad in the United Kingdom, in spite of the fact that it was the most complete monopoly in the country.[1] The Select Committee of 1872 concluded that "few cases have been adduced in which amalgamations already effected had to increase fares or reduce facilities, while on the other hand there is evidence that the most complete amalgamation which has hitherto taken place has been followed by a lowering of fares and rates and increase of facilities as well as by increased dividends".[2] Parliament, on the other hand, generally took the opportunity afforded by railway combination, at the recommendations of the Select Committees and the Railway Commission, to force a reduction of rates and charges. One Select Committee stated that "the effect of amalgamation was to diminish the expense of working and managing the railroads and thereby to enable the railroads to secure a greater profit on the existing traffic and in view of the case it might be taken as a general rule, that the maximum rates and tolls combined ought not to exceed the lowest rates which had been previously demanded and received by the respective railway companies.[3]

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1. Report of the Joint Committee, 1872, V. 13, P. XXVI.
2. Joint Committee, Report, 1872, V. 13, P. XXXI.
3. First report of the Select Committee on Railway Amalgamation, 1846, P. 5.

Combination and competition can not exist together. George Stephenson has well said, "Where combination is possible competition is impossible."[1] Competition over the same lines was proved impracticable.[2] Competition among railroads did not exist very long before they found out that they had everything to lose by its continuance and everything to gain by a compromise. So in almost every case it ended in some kind of arrangement by which its traffic was divided or in some sort of combination whereby competition was totally extinguished. Mr. S. Laing, formerly of the Railway Department in the Board of Trade, testified before the Select Committee of 1853 that he did "not know of any instance where competition has been established for any time when it has not led to combination."[3]

It may be asked why the principle of competition is applicable to ordinary trade and not to the railway business. A few reasons[4] may be stated and examined. In the first place the railway business differs from ordinary trade in its nature.[5] The amount of capital required for the construction of a railroad, the exclusive possession of the line of country best calculated for the purpose of economy and traffic, the permanency of a railway investment and the time required for bringing into active operation any new competitor tend to exclude these great under-

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1. Quarterly Journal of Economics, V. 18, P. 282.
2. The Statistics of British Railways, P. 16.
3. Fifth report of Select Committee on Railway Amalgamation, 1853, P. 117, question 119.
4. The Attempt here is simply to confine the statement to those reasons which appealed most strongly to the people of that time.
5. Fifth report, Select Committee, 1853, P. 4.

takings from the sphere of ordinary commercial pursuits. In the second place, competition in transportation buisness is usually limited in its applicability.[1] Railway companies can arrange to meet competition in small areas and make up their loss in places where there is no competition, or they can vary their charges so as to allow of such a combination between the railroads and their rivals as will render to both of them the largest aggregate amount of receipts from the traffic.[2] Thirdly, its advantages of combination are too obvious. Railway companies can not be expected permanently to maintain their competition, more especially as they are in all probability under little apprehension as to future competition, the prospect of a return to any third line being quite inadequate for its cost of construction.[3] Fourthly, rate wars are too disastrous. When different railway companies run between the same places they will first try to maintain their

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[1] The following cases which were reported and analyzed by the commission are the principal varieties in the circumstance which will affect the charges of railway companies, but it is only in the last case as shown by the commission where the full benefit of competition could be secured, the rest are either partially affected or none at all by competition.

a. "The conveyance to an important market, from various places on the line, of some commodity which it is also receiving in large quantities through other channels.

b. "The carriage between places where there is no competition.

c. "The supply of a town with some commodity which it cannot obtain through any other channel except at an exorbitant cost."

e."The supply of a town with some commodity which it cannot obtain through any other channel except at an exorbitant cost.

d. The carriage between two places which are also connected by another line of railways or by a canal, the property of another company.

e. The carriage between places which are also connected by a free navigation, as by the sea or by a large river. Fourth report, Railway Commission, 1851, PP. XXI-XXIII

[2] Fourth report of the Railway Commission, 1851, P. XXIII.

[3] First report of the Railway Commission, 1848, P. 51.

rates separately and later to arrange their charges together. If a new railway should ever be started with a promise of lower rates, it is certain after a short time to arrange a system of equal charges with its original rival.[1] As railway companies are free to agree as to rates and to enter into pooling arrangements, competition under such circumstances can not be of much use. Fifthly, railway competition is limited to a few companies. It will be easy for the few companies to combine as soon as they find that their interests are the same. Sixthly, the fighting powers of railway companies are proportional to the size of their net revenue. Large railway companies can use their resources very effectively to kill off competition. The tendency is for both large and small railway companies to seek combination in order to guard against any possible disastrous competition.[4] For these various reasons railway competition in the form of ordinary business competition cannot exist.[5]

Competition has not been regarded a satisfactory method of regulating railways. "It may be assumed to be a rule established by experience," stated the first Report of the Railway Commission of 1847, "that the working of each line must ordinarily be entrusted to the management of a single company, and that the prin-

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1. Report, Select Committee, 1872, P. 25.
2. Fourth Report, Select Committee, 1853, P. 4, Fifth Report, 1853, P. 14. Evidence 92-95.
3. Fifth Report, 1853, Evidence of the Baxter Railway Solicitor, P. 7.
4. Fifth Report, P. 7.
5. Journal of Royal Statistical Society, 1873, V. 36, P. 183; Edinburgh Review, V. 69, 1839, P. 176; Blackwood, V. 58, 1845, P. 648.

ciple of competition is not applicable to such an undertaking."[1] The interests of the public could not be safely entrusted to the operation of the principle of competition in the case of railways as in that of ordinary commercial enterprise. "The public can never be benefitted by the competition of railway companies," said one Select Committee.[2] Although in certain cases, public advantage had been derived from the competition of railway companies, yet those cases must be regarded rather as exceptions than as the rule.[3] The theory of competition was condemned as the root of most of the mischief in the legislation.[4] In Parliament, it was said, competition had been tried far enough in railway legislation. The interest of the community should not be left any longer to the operation of competition as in ordinary business enterprises.[5] As early as 1840 the Select Committee was recommending that railway companies must be monopolies and that such monopolies ought to be subjected to the superintendence and control of some department of the Executive Government.[6]

In connection with this it must be noted that the evils of competition had been somewhat exaggerated. Competition did accomplish a great deal for the English public in obtaining not only

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1. First Report of Railway Commission, 1848, P. 51.
2. Second Report of Select Committee on Railway Amalgamation, 1846, P. X.
3. First Report of Railway Commission, 1848, P. 51.
4. Report of Select Committee on Railway Amalgamation, 1853, Evidence, question 825, by J. Swift.
5. Han. V. 132, 1844, PP. 594-598.
6. First Report of Railway Commission, 1848, P. 53.
   Second Report of Select Committee on Railway Amalgamation, 1846, P. X.
   Journal of Royal Statistical Society, 1859, V. 22, P. 384. The paper pointed out the evils of Competition as applied in France and England for the regulation of railways.

lower charges but also better facilities and accomodations. The public complained, because competition failed to accomplish what was expected. There are two different phases of competition: competition that secures to the public the cheapest and best service and competition that creates waste and insecurity of property. It is only the latter form of competition that should receive some condemnation. In the matter of railway charges, there was on different occasions effective competition between railway companies and railway charges had been actually reduced.[1] When there was little direct competition in lower charges, competition in better facilities and accomodations often became intense.[2] It was always possible to compete in facilities and accomodations. One railway company might offer better service than another without breaking the agreements which the two companies might have made with each other for equal charges. Trains might be more convenient to the public, carriages more comfortable or facilities for collection and delivery of goods might be greater by one railway than by another. Station accomodations might be improved and grievances removed more quickly by one railway company than by another. In all of these and numerous other ways railway companies did compete with one another. This competition, of course, had little direct effect in lowering railway charges to the public, for they had better service at the old price.

Before we enter upon a consideration of the second period of rate regulation it may be well to summarize in a few words the

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1. Report, Joint Committee, 1872, V. 13, P. XXIV.
2. Han. V. 215, P. 1545.

important points that we have been discussing. The failure of the early legislation relative to railway rates was chiefly due, on the one hand, to the recent origin of railway communication, to the rapidity of its growth and to the variety of unexpected results consequent upon so great a change in the internal communication of the country; and, on the other hand, to the strong disinclination of Parliament to interfere hastily with the railways as private enterprises of national importance. These two groups of reasons account for the great caution and also for some of the errors in the early legislation regarding railways. By the end of the period the conception of the railway was greatly changed. Railway companies were no longer to be regarded as of merely private but of national concern. The need of a change of policy in respect to railway legislation was immediate and imperative. We shall see in the next chapter the transition which leads to the change in the legislative policy in the regulation of the railways in England at a later period.

CHAPTER V.

The Beginning of General Rate Regulation.

The great burst of railway speculation about 1836 together with the general dissatisfaction with the rate regulation awakened the attention of the legislature in that year to the importance of the railway problem.[1] Parliament began to view the problem from the standpoint of the nation and much time was devoted to its solution. One member of the House of Commons, Mr. James Morrison, had as early as 1836 foreseen with remarkable prescience the chief problems that must arise as the railway system extended. He proposed fundamental remedies, which were, however, too far ahead of his time. Mr. Morrison was the member from Ipswich, a man who had risen by his own "industry, sagacity, and integrity" from very humble beginnings to enormous wealth.[2] On May 17, 1836, Mr. Morrison made an important speech in the House of Commons and moved for leave to bring in a Bill.[3] The chief points in his speech are summed up by Professor Hadley[4] in the following words: "Railroads must naturally be a monopoly; competing roads will combine; parallel roads are a waste of capital; fixed maximum rates are

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1. Quarterly Review, V. 74, P. 239.
2. Dictionary of National Biography: "Morrison, James (1790-1857)
3. Han. 1836, V. 33, PP. 977-993; 988 (his motion)
4. Hadley: Railroad Transportation, Ch. IX.

useless." In his speech he called the attention of the House to the inefficiency of the railway legislation and he showed how the regulation of railway charges by fixing the maxima was made ineffective. When Parliament fixed a rate of charge, it took for granted that there would be no increase in traffic and no great improvements in the construction of locomotive engines and of the whole machinery and in the technical and administrative management of railroads. But every one knew from past experience that the contrary was the fact. Mr. Morrison, therefore, moved that "in all Bills for railways it be made a condition with a view to the protection of the public interests that the dividends be limited to a certain rate or that power be reserved to Parliament of revising and fixing at the end of every twenty years, the toll chargeable on passengers and goods conveyed".[1] He obtained leave to bring in a Bill to the effect but the House was not very favorable to it. The limitation of dividends was the chief point of attack, though the revision of tolls met with little criticism. The ministry did not support it and Sir Robert Peel, then the Prime Minister, opposed it too. The Bill was read a first time. Before a second reading could take place, Mr. Morrison became sensible of the hopelessness of his task. Signs of alarm were shown in the market, with reference to railway shares. The idea prevailed that all those who were in possession of railway property would be ruined, if the Bill became law.[2] It was added, and with some degree of weight, that if the State had done nothing

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1. Han. 1836, V. XXXIII? P. 988.
2. Francis: History of English Railways, P. 278.

to help, it ought to do nothing to injure railways. The period was not propitious. The Great Western Railway was not yet opened; the London and Birmingham Railway only partially so. The Bills for other lines had only just been passed. As the session was also drawing to a close, he was thus obliged to withdraw his Bill. No further attempt was made by Mr. Morrison in the following session. Mr. Morrison deals with the whole history of the Bill in a pamphlet[1] and remarks that "to suppose that Parliament will continue to reject all applications for railways which may interfere with the monopoly and high rates of the old lines, is to suppose that it will continue to sacrifice the interests of many to those of the few; low fares and national advantage to the high dividends of a few great railway companies."[2]

Had the bill of Mr. Morrison been passed into law, it is difficult to state what would have been its effects. Francis, writing in 1851, laments the failure of the Bill. He came to the conclusion that the railway companies would have been powerless to injure the public, while the advantage of their proprietary would have been inestimable.[3] This may be an overestimation of the fact. It is true that the Bill, if passed into law, would probably have produced some good results, but it is doubtful whether the development of railway system and railway business would not have been retarded, as it came so early and at such a period that railway construction in England needed encouragements, not im-

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1. Tracts on Railways, P. 16: "Defects of the English System of Railway Legislation," P. 13.
2. Tracts on Railways, P. 16; Defects of the English System of Railway Legislation, P. 13.
3. Francis: History of English Railways, P. 280.

pediments.[1]

Mr. Morrison's Bill was the first attempt at legislation for railways on a general scale. From now on the public became more and more dissatisfied with the existing system of regulation. More attention was paid by Parliament to the legislation relative to railways. Various Select Committees of the ablest members were appointed from year to year to the study of the railway problem. Both the public and Parliament worked for restrictive regulation of railways.

In 1836 on the motion of Mr. Poulett Thompson, then President of the Board of Trade, a Select Committee was appointed "to inquire and to report on the Standing Orders for railway Bills and the conditions advisable for introduction into such Bills.[2] The report was made in the same year but it did not lead to any railway legislation. In 1836 a Select Committee on railway communication was appointed "to inquire and to report upon what measure it would be just and expedient to adopt, for the purpose of securing to the public the benefit of the conveyance of Imperial Mails by railroads." In a short report which was made on March 23, 1836, the Committee recommended, among other things, that the Post Office should have the power to run its own engines and trains, without paying any tolls.[3] As the result of their recommendation, the Railways (Conveyance of Mails) Act was passed in August 14, 1838.[4]

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[1] In spite of the fact, Mr. Francis was entitled as "champion of the rail" for his book. Blackwood, 1851, PP. 739-750.
[2] Report of the Select Committee, 1836.
[3] This Report was reprinted Februaty 13, 1844 and attached to that of 1844.
[4] 1 and 2 Vict. C., 98.

This is the first general railway Act, but it possesses little interest in our inquiry. In the following year, 1839, on April 11th., another Select Committee on Railway Communication was appointed with Mr. Poulett Thompson as chairman[1] to inquire into the state of communication by railways. In one of the two reports, a general Exemption Clause was recommended, reading as follows: "and be it further enacted, that nothing herein contained shall be deemed or construed to exempt the railway, by this or the said recited Acts relating to railways which may pass during the present or future Session of Parliament".[2] The Select Committee recommended that this clause be hereafter inserted in all railway Bills.[3] The Clause, though it was, perhaps, not very effectively worded,[4] embodied, however, an important principle, as it marked the first step towards subjecting all the railways to general legislation.[5] The Committee wished for further inquiry to be madethe following Session, so nothing was done.[6]

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1. Han. V. 46, P. 1220, 1314.
2. First Report, Select Committee, 1839, P. III.
3. Opinion was expressed that the General Exemption Clause should have been inserted in all the railway bills much earlier. See Quarterly Review, 1844, V. 74, P. 239. "It is to be regretted that a General Exemption Clause, similar to the one recommended in a report of 1839, for the future intervention of the legislature was not then attempted. That Committee (of 1836) indeed, does not seem to have thought of entering into such general considerations but confined itself to the preliminary and very insufficient checks to be afforded in the future improvements of the Standing Orders. So that 29 Bills of 1836 and those of 1837, 1838 and 1839 were laboriously battled by promoters and opposed through the Committee of both Houses of Parliament without any superintendence of the government."
4. Quarterly Review, V. 74, 1844, P. 253.
5. First Report of the Railway Department of the Board of Trade, 1841, P. 18.

Second Report, Select Committee, 1839, PP. V, XIV.

On January 21, 1840, practically the same Select Committee was reappointed with Mr. Labouchere, then President of the Board of Trade, as chairman.[1] Five reports were made by them; the third,dated May 14, 1840, was of chief importance. Through the recommendations of the Select Committees of 1839 and 1840, the Regulation of Railways Act was passed on August 10, 1840.[2] The Act [3] delegated three important duties to the Board of Trade. The first was to inspect new railways before opening; the second, to require railway returns and tables of tolls and rates; and the third, to enforce the provision of the railway Acts.[4] The Act also required all the by-laws, rules and regulations issued by the railway companies to be approved by the Board of Trade. A railway Department with the President of the Board of Trade as its President was for the first time organized in the Board to take charge of railway affairs. As the Act was limited by its incomplete legislation, Mr. Gladstone in 1842 introduced another Bill to amend the Act. The Bill was passed on July 30, 1842, and the Act was known as the Railway Regulation Act, 1842,[5] which modified somewhat the powers mentioned in the Act of 1840. The requirement of giving notice to the Board of Trade before opening a new railway was now to apply not to all railways, but only to those which were intended for the public conveyance of passengers. The power of requiring returns of accidents was extended to in-

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[1] Han., 1840, V. 51, P. 419.
[2] 3 and 4 Vict. C., 97.
[3] The purpose of mentioning the Acts of 1840 and 1842 here is to get the historical connection.
[4] See also Report of the Royal Commission, 1867, P. X.
[5] 5 and 6 Vict., C. 55.

clude all cases of accidents whether or not attended by personal injury. By this Act, every railway company was also required to convey troops on railways at prices to be settled between the railway companies and the Secretary of War.

At the beginning of 1844 Parliament again directed its attention to the increasing importance of railway communication. Mr. Gladstone moved for a Select Committee on February 5, 1844 "to condiser whether any new principles ought to be introduced into such railway bills as may come before the House during the present or future Sessions."[1] The appointment of members to the Committee was the chief topic of debate in the House. One important objection was that too much railway interest was represented in the appointments.[2] Mr. Wallace found that there were no fewer than five directors of railways on the list. In spite of the objection the motion was agreed to and a strong Committee[3] was appointed. With Mr. Gladstone as Chairman, the Committee interpreted their duty widely and touched almost every question affecting railways.

The work of Mr. Gladstone's Committee occupies a high place in the history of railway legislation. Railway inquiry was at that time more or less a pioneer's work. Through its reports one can see that they succeeded to a far greater extent than any of the former Select Committees. Among the many distinguishing features, a few deserve to be pointed out. Mr. Gladstone's com-

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1. Han. V. 72, 1844, PP. 232-234.
3. Han. V. 72, 1844, P. 286.
3. The Committee numbered fifteen and included Mr. Gladstone, Lord Seymour, Mr. Patten, Mr. Labouchere, Lord Sandon and Mr. Denison.

mittee, in the first place, gave the question of railway legislation a broader consideration than it had hitherto received.[1] They viewed the question from the standpoint of the nation and pointed out the harm that had been done to the country by the absence of national policy in railway legislation. Upon the ground of positive defects which they conceived as attaching to the existing system of railway legislation, "the Committee entertained very strongly the opinion that in the future proceedings of Parliament, railway schemes ought not to be regarded as merely projects of local improvements, but that each new line should be viewed as a member of a great system of communication, binding together the various districts of the country with a closeness and intimacy of relation in many respects heretofore unknown."[2] In the second place the Committee insisted that the public and the railway companies should be equally protected. The complaint of monopoly urged by the public against railway companies was "not a blot on the railway industry but an indication of the benefit they had conferred on the country.[3] This monopoly as viewed by the Committee was not secured through special privileges conferred on them, but by better accomodation and cheapness in the railway transportation which gave the railway companies the command and supremacy of travelling in their districts. Railway enterprise,

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1. Fifth Report, Select Committee, 1844, P. X.
2. Fifth Report, Select Committee, 1844, P. VI.

therefore, should be encouraged and Parliament should take no step which would arouse suspicion of its good faith with regard to the integrity of privileges already granted.[1] It was of great national importance to give countenance and aid to the investment of capital in domestic improvements. "The very complaint of monopoly which is urged against railway companies is an indication and a measure of the increased accomodation to the traffic of the country which they have afforded.[2] In the third place, they recommended something far more drastic than the mere strengthening of competition against the railways. They tried to get at the root of rate regulation. They sought to give the state a direct control over the railways. The reports no doubt possess great importance in the history of railway legislation, as not only were they ably written, but their opinions were broad and comprehensive and the tone was just and conciliatory.[3]

Of the six reports[4] which they made between February 16 and July 22, 1844, the third is the most important for our purpose.

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[1] Third Report, Select Committee, 1844, P. 2.
[2] Ibid.
[3] Quarterly Review, V. 74, 1844, P. 274.
[4] General Views of the Committee of 1844 as summarized by the Joint Committee of 1872 are as follows:
   1. The indefinite concessions made to the earlier companies had become unnecessary.
   2. Fares and rates were too high.
   3. Competition would do more injury to the railway companies than good to the public.
   4. The effect of monopoly, both on the public directly, and indirectly on the railway companies was to be dreaded and guarded against.
   5. With regard to new lines, at any rate, the government and Parliament ought to reserve certain powers to be exercised after a given time.
Report, Joint Committee, 1872, V. 13, P. V.

The First, Second and Fourth Reports contained short recommendations affecting Private Bill procedure. The Fifth Report dealt with the rating and the general problems of railways. The Sixth Report recommended a General Railway Act, consolidating all such enactments as were common to all railway companies.

In the third report sixteen resolutions with regard to new railways were recommended, those relating to the revision of rates being as follows:

"That[1] if, at the end of a term of years to be fixed, the annual divisible profits upon the paid up share capital of any such line of railway shall be equal to a percentage to be paid, or so soon after the expiration of the said term as the said percentage shall have been reached, it shall be in the option of the government; either, first, to purchase the line at the rate of a number of years' purchase, to be fixed of such divisible profits; or, secondly to revise the fares and charges on the lines in such manner as shall in the judgment of the government, be calculated to reduce the said divisible profits, assuming always the same quantity and kinds of annual traffic to continue to the said percentage; but with a guarantee on the part of the government to subsist while such scale of fares and charges shall be in force, to make up the divisible profits to the said percentage.

"That[2] the term of years be 15, to date from the next following first of January, after the passing of the Act for the con-

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1. Third Report, 1844, P. 5, Resolution 2; Report, Joint Committee, 1872, V. 13, P. V.
2. Third Report, 1844, P. 6, Resolution 4; Report, Joint Committee, P. V., 1872.

struction of the railway.

"That[1] the rate of divisible profits at which the right of revision shall accrue shall be 10 per cent."

In consequence of these recommendations, Mr. Gladstone in 1844 introduced a Bill[2] which met considerable opposition both within and without Parliament[3] and which was passed by a sort of compromise.[4] The Bill contained forty clauses; twenty formulated to the provisions respecting state purchase; four respecting the public service, access of the public to the station and yards, conduct of inspectors and the prosecution of offense. The effect of the Bill was to enable the state either to purchase or to revise the tolls of future constructed railways on certain terms. The proposition Mr. Gladstone meant to contend for was that Parliament ought to have that discretion - state purchase.

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1. Third Report, 1844, P. 6; Resolution 4,
2. The opinion about the Bill was very divergent; some thought it went too far and some not. Mr. Roebuck stated in Parliament that he could not understand the sort of half and half way in which the gentleman (Mr. Gladstone) intended to deal with the subject. He requested Mr. Gladstone to consider the question of railway monopoly as a whole and not in parts and fractions. Han. LXXII, 1844, P. 242.
3. The opposition both inside and outside of the Parliament to Mr. Gladstone's Bill was very great. In Parliament, besides, the opposition of many members, Sir Robert Peel, then Prime Minister, did not support the Bill. He stated that he would repeat as a general principle, the House ought to have great regard to those cases in which large bodies of men had invested immense capital in certain speculations on the good faith of Parliament. "In his opinion the natural control over these railway companies was not by minute interference with their gains or their management, but by holding out to them the menace of competition." The latter principle had been condemned as ineffective by Mr. Gladstone and his Committee. Outside the Parliament the opposition was even greater. Toward the end of June, 1844, a deputation representing 29 railway companies with capital amounting to 50 million pounds drew up a memorandum against the Bill which was widely circulated among railway shareholders and members of Parliament: Han. LXXVII, P. 250. Railway Times, 1844, PP. 713-727.
4. Han., 1845, LXXVII, P. 267.

As passed, the Railway Regulation Act of 1844[1] provided in the first place that if the clear annual divisible profits incomplete should amount to 10 per cent on the paid up capital of any railway authorized in that or any subsequent Sessions at the end of 21 years from the passing of the Act sanctioning the line, the Lords of the Treasury might revise the tolls, fares and charges so as to reduce the dividend to 10 per cent. But the revision must be accompanied by a guarantee on the part of the government that revised rates should produce a dividend of 10 per cent to the company for a further period of 21 years.[2] The clauses relating to State purchase of railways will be discussed in a separate chapter.[3]

In practice, both the plan for revision of railway rates and the scheme of State purchase failed completely. We shall examine here only the plan for the revision of railway rates. In the first place, the Act excluded all the railways sanctioned before the Session of 1844 - that is to say, 2,300 miles of railway.[4] In the second place, the plan for the revision of railway rates possessed inherent defects. The chief hinderance to the practicability of the plan was the guarantee of 10 per cent profits for 21 years, before revision could take place. No government

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1. 7 and 8 Vict. C., 85.
2. In a few of the special acts, the power conferred upon the Treasury of reducing the rate of tolls at the end of 21 years when the dividend exceeds 10 per cent was extended to a lower rate of profit, sometimes sixpence, such as in the Acts which amalgamated the Great Western, the South Wales and the West Midland Railway Companies: Report of the Royal Commission, 1867, P. XXXII. Provision of the Act; Report of Committee, 1867, P. XI.
3. See Chapter XII.
4. Report of the Royal Commission, 1867, P. 33 contain a table of the railways; see also _Journal of Royal Statistical Society,_ 1873, V. 36, P. 261.

would like to try experiments in reducing rates under such conditions. Moreover, as stated by the Joint Committee of 1872, efficient and economical administration could scarcely be expected from a railway company whose rates were cut down and whose dividend at 10 per cent was guaranteed by government.[1] "The hope of revision was quite illusory."[2] In the third place, the lack of uniform accounting systems on all railways was just as strong a cause as either of the other two just mentioned. No provision was made in the Act to settle the principle as to how the dividends and profits should be calculated.[3] Mr. Morrison wrote very strongly of the folly of taking an option to revise charges at 10 per cent without establishing a systematic control over the method by which profits were calculated.[4] There existed no efficient accounting system by which Parliament could obtain anything like an accurate knowledge of the net profits of railway companies. The capital on which dividends were declared, exceeded, in many cases by large sums, the actual outlay. It is true that in the following year, certain rules were laid down in the Companies Clauses Consolidation Act,[5] with respect to the augmentation of capital by the creation of new charges, but the Act did not prohibit the railway companies from allocating shares among the proprietors at par when actually at a premium in order that they might pocket the

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1. Report, P. VI.
2. Second Report, Select Committee, 1846, P. VI.
3. Report of the Royal Commission, 1867, P. XXXIII.
4. Influence of English Railway Legislation on Trade and Industry, PP. 21, 22, 67.
5. 8 and 9 Vict. C. 57.

premiums. The railway companies by swelling the nominal amount of stocks beyond the actual outlay on the lines could always nullify the object of Parliament in subjecting them to a revision of charges when the dividends should equal or exceed 10 per cent.[1]

For these and various other reasons the most important parts of the Act were never enforced, but the Act was not entirely inoperative. The provisions for the carriage of troops and mails at special rates and for cheap trains in the interests of the poor classes, were effective, and, in part, are still in force; but the discussion of these does not fall within the proper scope of our inquiry. Mr. Gladstone's Act filled a large place in the English Railway history, because it was the most direct attempt that had been made to give the state a share in railway working. The ideas of 1844 oscillated between competition and state ownership. Mr. Gladstone sought in 1844 to give the state direct control over the railways. He failed because the railway interest was too

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1. Second Report, Select Committee on Railway Enactments, 1846, P. VI.

strong at that time.[1] He was compelled to profess that he "did not call upon the House to interfere with the original rights granted to the railway companies." His Bill was not "for the purpose of fettering or interfering with private rights."[2] His Act marked for the second time the failure of the attempt at the regulation of railway rates. The rate situation left by the Act of 1844 was practically the same as that of 1836 except that of some indirect effects and probably some moral restraint on the railway companies.

Between 1845 and 1854 no important Acts were passed especially relating to the regulation of railway rates except the Railway Clauses Act of 1845. In 1845 three Acts - the Companies Clauses Consolidation Act, 1845,[2] the Lands Clauses Consolidation Act, 1845,[3] and the Railway Clauses Consolidation Act, 1845,[4] - were

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1. Han. LXXII, 1844, P. 255.
Mr. Wallace: "he understood out of doors that the railway interest in that House had come down prepared to stop discussion on this Bill and that if they could not carry it by votes, they would by postponement. Six years ago this month (July 8) upon bringing up the report of the Railway Committee a similar scene took place."
Han. LXXVI, 1844, P. 474; 466-483.
Mr. Cleveland Stevens in his book on English Railways, their Development and their Relation to the State, said that "no doubt it was this opposition (railway interest) that compelled him to amend the Bill so that it became practically valueless as a means of purchasing the railways." P. 124. The author seemed to think that the chief reason that the act remained inoperative was due to the modifications in Mr. Gladstone's original Bill. "If Gladstone's intentions as expressed in his Bill, had been made law, the state would have had far greater power. Moreover, the act might then have been workable and effective, for Gladstone would have maintained an interest in the question and during his many years of office after 1844 might have grappled with the railway problem. As it was, Gladstone dropped railways after 1844." P. 115.
2. 8 and 9 Vict C., 16.
3. 8 and 9 Vict. C., 18.
3. 8 and 9 Vict. C., 20.

passed. Lord G. Somerset, in bringing the Bills before the House, stated that the object of the measures was simply to embody in uniform Acts the various enactments relative to the subjects which were scattered through many Acts of Parliament.[1] The Acts were simply consolidations of the various provisions usually inserted into the special railway Acts. Certain modifications and additions which were deemed desirable by Parliament were also inserted. The Clauses were made applicable to railway companies in general.[2]

These Acts need not detain us except for a few points in the Railways Clauses Act regarding the power and mode of levying charges. The Act was still enacted on the familiar basis of the early conception of railway enterprise. Railway Companies were toll-takers and owners of the line.[3] But the right of railway companies to act as common carriers was recognized and protected.[4] Section 90 gave the railway companies power to vary tolls, with one important restriction. The tolls must be at all times charged equally and at the same rate to all persons and all goods of the same description, passing only over the same portion of the line of railway under the same circumstances.[5]

All the common law required of a common carrier was not to charge any more than was reasonable. Unequal rates might be charged on different customers.[6] Though the Railways Clauses

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1. Han. LXXVII, 1845, P. 170.
2. Report of the Royal Commission, 1867, P. XI.
3. 8 and 9 Vict. C. 20, Sections 82, 86-103.
4. 8 and 9 Vict, C. 20, Sections 86, 89; Waghorn: Law, P. 4.
5. 8 and 9 Vict. C. 20, Section 90.
6. Baxendale v. Eastern Counties Railway, 4 C. B. N. S., 78.
   Branley v. South Eastern Railway, 12 C. B. N. S., 74.

Act recognized railway companies as common carriers, yet the equality clause enacted a further restriction on railway companies as common carriers. It prohibited railway companies from exercising the power of varying their charges in favor of or against any particular company or person travelling upon or using the railway.[1] It was designed to prevent an attempt at monopoly by the railway companies and a preference in favor of one or more to the prejudice of others. Railway companies were at liberty to vary the charges according to differences of cost, risk and liability incurred but they were required to charge equally all persons conveying goods under like circumstances.[2]

The meaning of the equality Clause in the words of goods "of the same description" conveyed "under the same circumstances" was with reference to those qualities which would affect the risk and expense of carriage and to circumstances where the risk, and expense would in the opinion of a jury be the same.[3] In the case of parcels, the words were used not with reference to the contents of the parcels but to the parcels themselves, that is like or different for the purpose of carriage.[4] The equality clause was confined to requiring equality of charges as to goods of the same description "passing only over the same portion of the railway under the same circumstances."5 These words would apply only

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1. Great Western Railway v. Sutton, L. R. 4 H. L., 252.
2. Crouch v. Great Northern Railway, 9 Ex. 556.
3. Great Western Railway v. Sutton, L. R. 4. H. L., 247.
4. Great Western Railway v. Sutton, l. r. 4 h. l. P. 226.
5. Murray v. Great South Western Railway Co., 1883; 4 Railway & Canal Cases, 456; Boyle & Waghorn: The Law Relating to the Railway and Canal Traffic Act, Vol. 2, P. 215 (320)

to goods passing between the same points of departure and arrival.[1] In order to bring a case within the language of the equality clause, the termini both of arrival and departure must be the same. It would not apply when the termini were different.[2] There should be equality of charge in respect of all goods carried upon the same railway under the same circumstances.[3] Mere inequality in the rate of charge when unequal distances were traversed would not constitute a preference inconsistent with the words of the Clause.[4] When a complaint was made that a railway company carried coals from a group of collieries situated at different points along the line and charged all the carriers one uniform set of rates, the Court held that, as the circumstances were different, the railway company had not infringed the law.[5] A difference in cost constituted a real difference in the circumstance.[6] The fact that goods were carried for one customer to certain ports for the purpose of developing a new trade or opening up a new market, would not constitute a difference in the circumstance so as to justify inequality of rates.[7]

The words in the equality clause were used with reference to the conveyance of goods and not to the persons who sent them.[8] There must not be any personal discrimination. The Clause had

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1. Denaby Main Colliery Co. v. Manchester, Sheffield and Lincolnshire Railway, 11 App. Case, 97.
2. Murray v. Great South Western Railway, 4 Railway and Canal Traffic Case, 456.
3. London and North Western Railway v. Evershed, 3 App., 1037.
4. Denaby Main Colliery v. M. S. & L. Railway, 11 App. Cas., 97.
5. Ibid.
6. Ibid P. 98.
7. Ibid. P, 97.
8. Murray v. Glasgow & S. W. Railway, 11 Court Session Case, 4th Series, 205.

nothing to do with the business of the consignor or consignee.[1] Mr. Sutton's business was collecting parcels from wholesale houses and from private individuals, packing them together in boxes and sending them by Great Western Railway to the different towns where he had agents who there received the boxes and distributed the parcels. His profits were derived from charging each parcel as if it had been separately carried. On the complaint that the railway companies charged him higher rates than other wholesale London houses for like traffic under like circumstances, the Court held that the railway companies had violated the law. The fact that Mr. Sutton was a rival carrier with the railway companies would not constitute a difference in circumstance and thereby justify a higher charge.[2] Railway companies were bound to treat all persons alike for all purposes. The same mode of making charges must apply to all whether the consignor or the consignee was a carrier or not. The Great Western Railway Company once made the following distinction as to their charges for carriage: in the case of the public, if there were several packages from one consignor to several consignees or from several consignors to one consignee, the charge was upon the aggregate weight; in the case of carriers, the charge for similar traffic was upon the separate weight of each package. On complaint the Court held that the railway companies violated the equality Clause.[3] It was held on another oc-

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1. Parker v. G. W. Railway, 11 C. B. 545.
2. See also Pickford v. Grand Junction Railway Co., 10 M & W. 399.
3. Parker v. G. W. Railway Co., 7 M. & G., 253.

casion that the requirement of equality of charge was confined to the railways in England; no excess of charge made in France for the carriage of goods from France to London was recoverable.[1]

The Equality Clause was, therefore, a very rigid rule. For the same service the same sum should be charged. Everything turned upon the words "the same"; the moment the service was not the same the Clause would not apply.[2] The construction that was put by the Court of Law upon the Clause rendered it inoperative. The Court held the opinion that where the original place and departure or ultimate place of arrival for the passengers or goods was different, the charges could be different too.[3] Practically no two kinds of traffic would be carried the same distance and under exactly the same conditions. Therefore a clause that merely insisted on equality when all the circumstances were exactly the same had very little effect.[4]

In 1846 several important Select Committee on Railways were appointed.[5] They all recommended in one form or another that a

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1. Branley v. South Eastern Railway, 12 C. B. N. S., 63.
2. Pickering, Phipps and others v. L. N. W. Railway Co., and others, 1892; 8 Railway and Canal Traffic Cases, 83, 110
3. Fourth Raport of Railway Commission, 1851, P. XXI.
4. Darlington: Railway and Canal Traffic Acts, P. 48.
5. Both Houses appointed separate Committees; two from the House of Commons and one from the House of Lords. The Select Committee of the House of Commons made four reports: two on the principles of amalgamation as applied to the Railway and Canal Bills and two on Railway Acts Enactments. The Select Committee of the House of Lords was appointed to consider whether a uniform system of management could be enforced on railways; how the expense attendant on obtaining Acts of Parliament could be diminished; and whether legislative measures could be found to protect individuals from the injury sustained from railways passing through their property, so as to relieve them from being subjected to the expense of opposing Bills in Parliament. Besides these Committees, a Commission was appointed to inquire into the gauge of railways.

low scale of tolls and charges should be imposed and that the rates of amalgamated companies should be subjected to revision. The Committees concurred in recommending the appointment of a special Railway Commission or the creation of a special Executive Department, which should make preliminary investigations into all railway schemes and be charged with the power of general control and supervision of railways. In consequence of these recommendations an Act was passed in 1846 establishing a Board of Railway Commissioners.[1] The powers which were formerly possessed by the Railway Department of the Board of Trade were transferred to them and more powers were promised. But this Act was repealed by the Board of Trade (Railways) Act[2] in 1851. The Railway Commission formally ceased to exist in 1851, but in 1851 the work was already combined with that of the Board of Trade.

The period under review shows that Parliament endeavored to deal effectively with the great question of a proper regulation of railway rates. Some of the Acts, as we have seen, were subjected to such powerful influence that some of the provisions - and the most important ones as regards the public - were rendered to a large extent nugatory.[3] But much was accomplished. Railway enterprise was much better understood. Railway expansion was no longer looked upon with fear and suspicion. Regulation was to take place but only with the interests of both the public and private well protected. The various Select Committees from 1837 to

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[1] Its work will be discussed in Chapter XII.
[2] 14 and 15 Vict. C., 64.
[3] Parsloe: Our Railways, P. 237.

1853 agreed almost to a man that regulation of rates was necessary and that some supervising board should be created. During this period Parliament succeeded in reserving a certain right to itself which was of vital importance to all later legislative regulations. The first one was that Parliament might pass any general railway Act for regulating the railway system; the second was that Parliament possessed a power in certain contingencies of reducing the maximum rates; and thirdly, government might as a last resort purchase the lines under certain conditions. All these exerted such a strong influence on all the railway companies that there were left only two alternatives for the railway companies - either to submit to reasonable regulation or to government ownership.

CHAPTER VI.

The Railway and Canal Traffic Act, 1854.

Railway promotion was almost entirely suspended in the years following the mania of 1844-46. The act of 1850[1] which was to facilitate the abandonment of the construction, and the dissolution of railway companies illustrated the depression of the time. By 1852 the worst of the crisis was over and the spirit of railway enterprise was again reviving. The year 1854 marked a new era in railway legislation.[2] A Railway and Canal Traffic Act was passed in this year, and, the first of its series, effected a great change in the regulation of railway rates.[3] The Act imposed a new duty upon railway companies, namely, the duty of treating all customers alike, without giving "any undue or unreasonable preference or advantage" affording all reasonable facilities to the public and forwarding and delivering traffic without delay.

The Act of 1854 was the creature of the period. Maximum rate regulation of railway rates was ineffective and periodic revision of rates inoperative. Competition reigned supreme, but it afforded little protection to the public. Interchange of traffic

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[1] The Abandonment of Railways Act, 1850; 13 and 14 Vict. C. 83.
[2] Cleveland-Stevens: English Railways, Their Development and their Relation to the State, P. 192.
[3] Spillers v. G. W. Railway, 14. Railway and Canal Traffic Cases P. 81; Modern Railway Workings, V. 7, P. 133. Report Joint Select Committee, V. 13, 1872, P. XI.

was almost impossible, because of the intense rivalry among railway companies. Railway companies did not hesitate to vary their charges so as to produce the greatest amount of profit to themselves, irrespective of the greater or less facility or expense with which the several services were performed.[1] Either by laying obstructions at the junction points in the interchange of traffic or by charging unequal tolls and rates, traffic was usually sent by the most circuitous routes for a longer mileage distance.[2] Railway companies even disregarded maximum charges as in the case of the conveyance of coals and minerals; they denied to one person facilities which they afforded to others.[3]

Difficulties thrown in the way of interchange of traffic only excluded the public from enjoying the freedom of using the railways; the railway companies could always arrange to divide the traffic in that manner which they might consider most advantageous to themselves, with little or no regard to the interests of the public using the railways.[4] Railway companies never failed to combine to secure their respective interests and to obtain from the public the greatest possible amount of renumeration for services rendered with little or no regard for public convenience and security.[5] They possessed the power of materially interfering with the freedom of trade and of frustrating the intentions

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1. Fourth Report,Railway Commission, 1850, P. XXI.
2. Third Report,Railway Commission, 1849, P. 7.
3. Fourth Report,Select Committee, 1853, P. 5; Han. 1854, V. 132, P. 1242. See also Evidences given by Mr. Seymour Clark, general manager of Great Northern Railway; Report, Select Committee, 1853, Minutes of Evidence;question, 388-508.
4. Third Report,Railway Commission, 1849, P. 8.
5. Fourth Report,Railway Commission, 1850, P. XXIII.

of Parliament. Railway companies were managed in this period rather by the desire to serve their own local interest than to exchange traffic with one another for the convenience of the public. Strong efforts were made by some of the large railway companies to eliminate the smaller ones.[1] The object of Parliament in authorizing the construction of shorter lines on the ground of the advantages to be derived in the conveyance of particular classes of goods to markets by a shorter and more economical route at more moderate rates was largely defeated.

There was further the question of unequal rates which had exercised the public mind ever since 1845. Disputes constantly arose between the railway companies and the public as to the equality of charges.[2] The necessity for vigilance in parting with any control of the railway companies was further enhanced by the failure of competition to do what it was intended by Parliament, and the constant increase of amalgamation among railway companies under such conditions which Parliament must sanction.[3]

Though the need of more restrictive regulation was imperative, yet Parliament did not adopt it without consideration and inquiry. In Parliament it was urged that the railway systems had attained such vast proportions that all legislation connected with it must

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1. Amalgamation was no longer among small railway companies. For instance, one bill in Parliament at this time sought the union under one control of raised capital of 60,000,000 £, and annual revenue exceeding 4,000,000 £, and an extent of railway communication of upward of 1,200 miles, or more than one-sixth of the railways in the United Kingdom. Han. 1854, V. 132, P 1587.
2. Han. V. 303, 1886, P. 554.
3. Second Report, Select Committee, 1846, P. IV; Fourth Report, Select Committee, 1853, P. 4, 5.

be cautious, practical and well considered, that the interests of the railway companies as well as that of the public should not be neglected, and that it was advisable not to enter too much into the details of the management of the different lines.[1] Although the rights and privileges granted by Parliament in the special acts could not be exclusively maintained when they ceased to be consistent with the general advantages of the public, yet the power of making charges from which their just renumeration was to spring as specified in the Acts, must not be curtailed except that upon clear grounds of public policy.[2] The utmost importance of preserving the most amicable relations between the executive government as the guardian of the public interests on the one hand, and of the private interests on the other must be duly and carefully realized.[3]

Though railway problems were probably pretty well understood by this time through the many valuable reports made by the various Select Committees,[4] the Railway Department of the Board of Trade, and the Railway Commission, yet it was thought desirable to appoint, in December, 1852, a strong Select Committee[5] "to consider

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1. Han. V. 132, 1854, P. 601.
2. Fifth Report, Select Committee, 1853, P. 6.
3. Fourth Report, Select Committee, 1854, P. 4.
4. The following committees upon Railway Bills had sat during the seven years preceding 1853:
    1846--64 Committee sat for 867 days.
    1847--52 Committee sat for 635 days.
    1848--14 Committee sat for 176 days.
    '49--11 Committee sat for 73 days.
    '50--15 Committee sat for 113 days.
    '51--14 Committee sat for 131 days.
    '52--15 Committee sat for 137 days.
   Fifth Report, Select Committee, 1853, P. 15.
5. No less than five members were once either Presidents of the Board of Trade or Chief Commissioners of Railways, Han. V. 132, 1854, P. 585.

the principle of amalgamation as applied to Railway or Railway and Canal Bills about to be brought under the consideration of Parliament and to consider the principles which ought to guide the House in railway legislation." This Select Committee, of which Mr. Cardwell[1] was chairman, made five reports, the fourth and the fifth being the most important. It went into the subject very thoroughly and laid special emphasis on the need of facilities for the interchange of traffic. In the fifth report eleven recommendations were made; the seventh which is given here was the basis of the Railway and Canal Traffic Act of 1854.

"7. That every railway company should be compelled to afford to the public, in respect both of goods and passengers, the full advantage of convenient interchange from one system to another; to afford every class of traffic, including postal communication, just facilities and observe all statutory provisions especially those requiring equal charges under same circumstances, and that when complaint arises that any company has violated any of these obligations, provision should be provided for the hearing and decision of such complaint in open court, with power to make use of the interference of the Railway Department for the purpose of ascertaining by what specific and detailed arrangements such complaint may be effectually redressed."[2] It was pointed out that in conceding amalgamation, Parliament would part with a power

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[1] Mr. Cardwell was added to the Committee in Feb. 1853, after the first report was made on Dec. 16, 1852; the first report contained only one resolution.

[2] Fifth Report, 1853, P. 21.

which it might exercise for the purpose of securing to the public one of the greatest advantages that a commercial country could enjoy, viz., freedom and economy of transit for persons and merchandise from one part of the country to another.[1] Such power should never be parted with unless these advantages were fully secured.

Mr. Cardwell moved to bring in a Bill for the better regulation of traffic on railways and canals.[2] The object of the bill was twofold; it first defined the duties and obligations of railway and canal companies, and secondly it proceeded to establish a code by which these duties and obligations could be enforced.[3] The Bill originally consisted of three parts. In the first part it aimed to give to railway companies powers of entering into combinations and working agreements with one another for the purpose of bringing the whole system into harmony. In the second part were provisions for arbitration by the Board of Trade. The third part provided a machinery for securing to the public the practical enjoyment of that fair transit along the lines of railway companies from one to another, to which by the theory of law the public were already entitled. The Bill aimed to make this right effective and practical. Mr. Cardwell remarked that by enactment the right would be established; by decree of a court of justice, the violation of that right would be adjudicated and by arbitration the mode would be determined in which complete

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1. Fourth Report, 1853, P. 4.
2. Han. 1854, V. 132, P. 585.
3. Han. L854, V. 133, P. 594.

effect could be given to the decision of that tribunal.[1] The Bill did not intend to obtain powers for varying or altering railway charges.[2] What was intended was to make the railways to be really King's Highways for the public. There would be no more alliance, offensive or defensive, no more policy and no more diplomacy; but all the railway companies would be subjected to the law, giving their full benefits to the public with regard to the traffic of passengers and goods from one end of the Kingdom to another.[3] The Bill enunciated three important principles,[4] viz.:

1. That every railway company should afford reasonable facilities for forwarding and delivering traffic.

2. That no undue or unreasonable preference or advantage should be given.

3. That tolls and charges authorized by the special acts to be taken and exacted by the railway companies should be published by being exhibited on a piece of board.

When the Bill was in Parliament there was considerable discussion as to the best mode by which the rules could be carried into effect. Two modes were suggested; one, the establishing of a separate and independent Board of Executive Government; the other, reliance upon the court of law.[5] In spite of unfitness and prediction of failure from several members and many judges, the latter mode was adopted. The duties sought to be cast upon

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1. Han. 1854, V. 132, P. 593.
2. Han. 1854, V. 132, P. 596.
3. Han. 1854, V. 132, P. 599.
4. Joint Committee, 1872, V. 13, P. XII.
5. Han. 1854, V. 133, PP. 594-612; Railway Times, 1854, P. 580.

the judges by the bill, it was said, had nothing at all to do with law.[1] Regarding the word "reasonable"[2] in the Bill, no one could interpret it as it was not a code. It would leave the judges to exercise their own discretion as to what they might deem reasonable. Many courts intimated their unwillingness to undertake the duties, so the whole proceeding was confined to the Court of Common Pleas,[3] assisted, if necessary, by an engineer or a barrister.[4]

The Bill passed into law on July 10, 1854, under the title as already indicated, of the Railway and Canal Traffic Act, 1854.[5] The Act was a short one of but eight sections; of these, the second was much the most important. It required every railway company to afford reasonable facilities and no undue preference or advantage was to be given. It should be lawful to complain in

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1. Han. 1854, V. 133, PP. 594-612; Railway Times, 1854, P. 594.
2. Regarding the word "reasonable" the object of this part of the Bill was to apply the old law of common carriers, as it used to be upon the old roads, to the altered state of things upon the railways of the country.. That law imposed a presumtory obligation on the common carrier, and the word "reasonable" was the legal word always adopted to define the measure of obligation.
3. The Court of Common Pleas, like the other two Courts of Common Law - the Court of Exechequer and the Court of King's Bench - was an offshoot of the King's Household and was dependent upon the Curia Regis. In the 17th article of the Magna Carta granted in 1215 it was provided that "Common Pleas shall not follow our Court, but shall be held in some fixed place." The Court of Common Pleas thus assumed its distinction and was later permanently fixed at Westminister. The Court of Common Pleas was for the private suits of subjects, the Court of Exechequer for cases touching the King's revenue and the Court of King's Bench for all other matters, but later they became for most purposes three sister courts of similar and coordinate authority. Holdsworth, W. S.: History of English Law, 1909, V. 2, P. 168; May, T. E.: Constitutional History of England, 1912, V. 3, P. 284; McKechnie, W. S.: Magna Carta, 1905, PP. 308-317; Stubbs, W.: Constitutional History of England, 1873, P. 600, V. 2, P. 290.
4. 17 and 18 Vict., C. 31.
5. The Act, Section 2.

the Court of Common Pleas against any violation of the Act. The Act dealt with the question of impediments interposed in the way of freedom of traffic by compelling every railway company to afford reasonable facilities. As in that period through traffic was practically undeveloped, this certainly marked decided progress.[1] The Act did not, however, give every railway company power to make through rates, which was just as essential as the power of obtaining facilities for through traffic. The Act, therefore, had two important defects. The first was that the Court of Common Plea was not a Court that could discharge efficiently what was intended by the Act. The second was that as the power of making through rates was not given, the enactment for through traffic was made inoperative. The Select Committee of 1872 attributed much of the failure of this Act to the alterations of the Bill in Parliament, made under railway influence.[2]

With the passing of the Railway and Canal Traffic Act, 1854, the legislative policy of rate regulation was distinctly changed. Before 1854 railway statutes were passed with the idea that the company should provide a railroad which was to be open to all on payment of certain tolls. It was also empowered to carry and convey goods, making reasonable charges not exceeding those authorized. The right of free passage over railways was, however, unworkable. The later Acts, especially the Consolidation Acts of 1845 failed to impose such duties upon the companies as would make

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1. Han. 1854, V. 132, P. 589.
2. Joint Committee, 1872, V. 13, P. XIII.

it workable. The theory of free passage over railways was retained; but they laid down such obligations as would make the railway companies common carriers. The Railway and Canal Traffic Act, 1854, did not require railway companies to provide motive power to handle other persons'wagons at all times or under all circumstances,[1] but it recognized the right of the railway companies to be exclusive carriers and specified certain obligations for the protection of the public. Prior to the Traffic Act, 1854, the law against preference was contained in Section 90 of the Railway Clauses Consolidation Act, 1845, which made it unlawful to charge unequal rates "for goods of the same description passing only over the same portion of the line of railroad under the same circumstances."[2] But a railway company was not liable under these terms, unless the circumstances were exactly the same and unless the traffic passed not only over the same portion of the railroad but also over such portions, i. e., for the same distance, and between the same termini, as we have seen in the Murray and Great South Western Railway Company case.[3] The enactment necessarily possessed only a very limited application and its usefulness proved therefore, to be very small. The Traffic Act of 1854 extended the same principle; it prohibited the giving of any undue or unreasonable preferences or advantages in any respect whatever.[4]

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1. 14 Railway and Canal Traffic Cases, P. 70-71; Spiller v. G. W.
2. Railway Clauses Act, 1855, Section 90.
3. Murray v. Great South Western Ra. Co.; 4 Ry. & Ca. Tr. Cas. 456. Boyle & Waghorn: The Law relating to the Railway and Canal Traffic, V. 3, P. 215.
4. Twelfth Annual Report of Railway Commission, 1886, V. XX, P. 6, (c 4718)

The Railway Clauses Act of 1845 said that circumstances being equal, charges should be equal; the Traffic Act of 1854 said circumstances being different, the difference is to be proportional to the differences of circumstances.[1] The words of the equality clause in the Railway Clauses Act of 1845 had no elasticity at all; there were no outside circumstances to be taken into consideration. It was not a question of regarding the position of one trader as against that of another and then determining whether there was any undue preference. It was an absolutely rigid equality that was demanded by the statute.[2] A broad distinction must therefore be drawn between the equality clause and the Clause against any undue preference.

Before we examine the interpretations of the Act given by the Court of Common Pleas, it is first necessary for us to review briefly the principles that were rejected and the new policy adopted in the enactment, and also the reasons for the same. Periodic revision of rates was not only recommended by Mr. Gladstone in 1844, but also by Mr. Morrison as early as 1836. Revision of rates passed into law in 1844 but it was,as we have seen, inoperative. Aside from legislative defects, the principle of revision of the rates was in itself impracticable. To put the principle in practice, the natural question to ask was "on what principle is it (the Revision) to be performed and by whom?" Various methods had been

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1. Hearings on Regulation of Railway Rates, Senate Document, V. 18, 59th Congress, first session, 1905-1906, PP. 1844-46.
2. 8 Railway and Canal Traffic Cases, P. 108, Pickering Phipps v. L. & N. W. Railway Co., 1892.

suggested at different times. Firstly, it was proposed that a reduction in the rates should be made equivalent to the profit that the railway companies would gain in amalgamation.[1] Such a reduction would be surely temporary; it would not touch the rates most complained of. Moreover, a charge which gave the railway companies ample profit at a certain time, might, through increased economy or other causes, be excessive at a later period. Secondly, absolute limitation of dividends was proposed. The profit over and above a certain limit which was refused to the shareholder might go to the public in the form of reduced rates. But in order to make it effective a certain government department must be able to determine what would be the proper and necessary expenses of a railway company, what economies they could practice, and what expenses should be charged against revenue. Besides, the assumption that what was withheld from the share holders would be available for reduction of rates, might be a fallacy. It might lead to extravagant current expenses, which would leave nothing for reduction of rates or it might deprive the railway companies of their ordinary motive for efficiency and economy to such an extent that the profit would never rise above the fixed limit. Thirdly, division of profit beyond a certain limit between the railway companies and the public was recommended.[2] A limit (say 10 per cent) being set, all surplus profit should be divided between the company and the public; one portion of the surplus would be added

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1. Joint Committee, Report, 1872, V. 13, PP. XXXIV, XXXV.
2. Joint Committee, Report, 1872, V. 13, P. XXXVI.

to the dividend and the remainder applied in reducing charges. The difficulties were to find what the sum available for dividend should be, what specific rates should be reduced and according to what standard those rates should be reduced.

These methods being of no avail, it was repeatedly urged to fix some standard by which rates should be determined. One proposal was that the rates ought to be on some fixed proportion to the cost of service performed.[1] The cost of carriage should be ascertained and to this should be added whatever might be necessary in order to produce to the company a fair return on their capital and labor; the sum of these two should form the standard of charge by which the scale of rates should be determined and revised from time to time. Any such standard would be difficult, if it not impossible, in practice. To ascertain exactly the relative cost and profit of each description of traffic would not only be beyond the function of any government machinery, but also beyond their power.[2]

In close connection with the proposal to fix rates according to some standard, was the one to adopt equal mileage rates. An equal mileage rate is a rate varying in direct proportion with the number of miles run; it is a charge for each class of goods and

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1. Joint Committee,Report, 1872, V. 13, P. XXXIII; Select Committee,Report, 1882, V. 13, P. X.
2. The Select Committee of 1882 well pointed out that this would involve "the finding and consideration of such items as the original cost of the particular line; the cost of carriage of the particulargoods on that part of the line as compared with the cost of other goods on the same line and other goods on the other portions of the line; and the proportion of all these to the whole charges and expenses of the company." Select Committee, 1882,Report, V. 13, P. X.

passengers in proportion to the distance for which they are carried. But the results of adopting such rates, it was urged, would be disadvantageous both to the public and to the railway company.[1] In the first place it would prevent the railway company from lowering their charges so as to compete with traffic by sea, by canal or by a shorter or otherwise cheaper route and would thus deprive the public of the benefit of competition and the railway companies of a legitimate source of profit. In the second place, it would prevent the railway companies from making perfectly fair arrangements for carrying at a lower rate the usual goods brought in large and constant quantities or for carrying for long distances at a lower rate than for short distances. In the third place, it would compel a railway company to carry for the same rate over a line which had been very expensive in construction or in working at the same rate at which it would carry over less expensive lines. Competition between railways would be absolutely impossible. The policy of opening up distant markets to traders would receive a serious blow. Trade would be checked and price of many articles would rise. It was no wonder that all the Select Committee and Commissioners who had gone thoroughly into the function of the regulation of the rates, reported against any legislation along the lines of equal mileage rates.[2]

Parliament in 1854 changed its legislative policy in the regulation of rates. Equal mileage rates had been found impracticable;

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[1] Report of the Royal Railway Commission, 1867, P. XLVII; Report of the Select Committee, 1872, V. 13, P. XI; Report on Preferential Treatment, 1906, V. 55, P. 34.
[2] Han. 303, P. 555.

revision of the rates could not very well be carried out. These principles were abandoned. The Railway and Canal Traffic Act, 1854, was enacted on a new principle. Although the most material complaint on the subject of the rates was that rates for conveyance were unequal on different railroads and on different parts of the same railway, and that in consequence of these unequal rates, many trader and some parts of the country received advantages which placed them in a favored position for competition, yet Parliament recognized that unequal rates to some extent were necessary both to the railway companies and to the public.[1] The Railway and Canal Traffic Act, 1854, justified to some extent unequal rates.[2] Some preferences and advantages would not be illegal; only undue preferences and unreasonable advantages would be against the law. The Court of Common Pleas, and the two Commissions of 1873 and 1888 as we shall see later, distinctly upheld the right of a railway company to charge unequal rates under certain circumstances. Rates might be different when expenses were different. Different circumstances would justify differences in rates.

The carrying trade brought the railway companies into competition with carriers on land and water. Railway companies found it necessary to reduce their rates in order to draw traffic to their own lines. However much the owners of other modes of conveyance might have been prejudiced, the general public derived unqualified advantages from the great increase of facilities for

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1. Report of the Royal Commission, 1867, XLVII; Report, Select Committee, 1882, V. 13, P. VI, P. VIII, and P. XI.
2. Report of the Royal Commission, 1867, P. XLVIII.

the conveyance of merchandise. The principle which governed a railway company in fixing a rate is that of creating a traffic by charging such a sum for conveyance as would induce the produce of one district to compete with that of another in a common market. The power of granting unequal rates thus would stimulate a development of trade which would not otherwise exist. Some of the goods, if not carried at the lower rates, would either go by some other route or not be forwarded at all. It must therefore be admitted that some of the inequalities of charges would be to the advantage rather than to the disadvantage of the public.

The Act recognized this necessity but it prescribed a restriction. When preference was undue the law would afford a remedy. A preference to be illegal, and to furnish a reasonable cause of complaint, must be undue. It was not undue so long as it was the natural result of fair competition and so long as equal rates were given for like services under like circumstances and for like quantities of merchandise. Where circumstances, such as steep gradients or difference in quantities to be carried, made the cost of carriage to differ, these circumstances would justify a difference in charge. What would be reasonable for a road of easy gradient and a large volume of traffic might be unreasonably low for a road of heavy gradients and a smaller traffic. The preference as regards quantities is recognized by the custom of trade and is common to all branches of business. A man who buys goods wholesale expects to and does secure more favorable terms than the one who buys at retail; the seller by one wholesale transaction is saved the trouble and expense of many smaller ones as well as the cost of storage. The fixing of railway rates is not

that of a mechanical process; there is no one general theory which will cover the fixing of all railway rates.[1] A railway charge is a sum whose determining factors are numerous and constantly varying.

Analysis of the Decisions of the Court of Common Pleas, 1854-1873.

One great object of the Railway and Canal Traffic Act was to compel railway companies to act with impartiality to all persons desirous of using the railway and to secure that all should be placed upon equal terms.[2] No undue or unreasonable preferences should be given. The legislature placed this restriction upon the railway companies from using their powers and their railways for the benefit of one person to the exclusion of others. The law had the further object of preventing railway companies from becoming an onerous monopoly. The obligation was imposed on them in return for the great powers which Parliament conceded to the railway companies and for the monopoly of their carrying business. Without the restriction the powers of a railway company and its monopoly, under the impossibility of all competition,might be converted into means of very grievous oppression by a difference in charge or in point of accomodation made in favor of one man or place at the expense of another.[3]

What is "undue or unreasonable preference", or "undue or un-

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[1] Select Committee Report, 1882, V. 13, P. VIII.
[2] West v. London, N. W. Ry. Co., 1870; 1 Ry. & Canal Traffic Cases, 172.
[3] Baxendale v. G. W. Ry. Co., 1856; 1 Ry. & Canal Traffic Cases, 209.

reasonable prejudice?" It was very hard to define them and in fact no formal definition had been given. Judge Crowder stated in the Baxendale v. Great Western Railway Co. (Reading case), 1858, that he did not propose to lay down any precise definition of undue preference which would include every case.[1] Although no attempt had been made to define them formally and exactly, yet their meanings could be inferred from the various decisions. The terms of "undue or unreasonable preferences or advantage" and "undue or unreasonable prejudice or disadvantage" were not to be construed as ruled in the Nicholson case, with reference to the interests of the parties using the railroad only, nor to the interests of the railway owners, but to both of them.[2]

When the statute spoke of "undue and unreasonable preferences or advantage" and "undue and unreasonable prejudice or disadvantage," it did not imply that there might not be advantages to one person or one class of traffic or prejudice to another. It rather implied that there would be such advantages and prejudices but they would not be simply within the Act. The preference and prejudice must be "undue" or "unreasonable" to be within the statute.[3] The intention of the legislature was to give equal advantages so far as the charges and facilities were concerned to all individuals similarly circumstanced. The railway companies, although they had the right to lay down certain rules in reference to particular circumstances, provided they acted bona fide with regard to

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[1] Baxendale v. G. W. Ry. Co., 1858; 1 Ry. & Canal Traffic Cases, 209.

[2] Nicholson v. G. W. Ry. Co. (No. 1) 1858; 1 Ry. & Canal Traffic Cases, 138.

[3] Baxendale v. G. W. Ry. Co., 1858; 1 Ry. & Canal Traffic Cases, 210.

their own interests and the interest of the public, should not be at liberty to make particular bargains with particular individuals, whereby one person was benefitted and another injured.[1] In the Ransome Case (No. 1) Messrs. Ransome & Co., was charged a much larger sum per ton in proportion to the distance over which their coals were carried, than Messrs. Edward and Alfred Prior & Co. by the Eastern Counties Railway Co. Messrs. Ransome were able to bring coals from Northumberland and Durham to Ipswich by sea. Messrs. Prior could bring their coals from Yorkshire and Staffordshire only by means of the Great Northern and the Midland Railways. Messrs. Prior had made an agreement with the Eastern Counties Railway Company to send a larger quantity of coals in three years from Peterborough to various places on the line of the railway mentioned at certain rates to different places. The sums charged to Messrs. Prior for the carriage of coals to different places were fixed so as to enable them to compete in the coal trade with Ransome & Co., who had the advantage of having their coal brought by sea to Ipswich. The Court granted the injunction,"enjoining the railway company" to desist from giving any undue preference to Messrs. Prior and to carry coal for Messrs. Ransome on equal terms with Messrs. Prior, due regard being had to the circumstances, if any, which rendered the cost to the company less in carrying for one party than for the other."[2]

The greatest difficulty in interpreting the law was how much

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[1] Ransome v. E. C. Ry Co. (No. 1), 1857; 1 Ry. & Canal Traffic Cases, 70.

[2] Ransome v. E. C. Ry. Co., 1857; Ry. & Canal Traffic Cases, 63.

the interest of the railway companies should be taken into consideration in deciding a preference or prejudice, "undue or unreasonable." It was admitted on all sides that the interests of the railway company should be taken into account.[1] The Court felt greater reluctance to interpose in those cases where the benefit of the railway company in their character of proprietors of the particular railway was involved. The reason was partly from an unwillingness to interfere with parties in the management of their own affairs for their own advantage, and partly from a disposition to give the railway companies credit for acting on an enlightened view of their own interests as identified with those of the public. This argument sometimes carried itself too far as in the Baxendale v. Great Western Railway Company (Reading Case) that the Court could not interfere to prevent a railway company from fixing the rates of tolls to be taken on its railway in such a manner as would best promote its own interests.[2]

The Court, though, took into consideration the interest of the railway companies, yet never allowed the railway companies to do it unlawfully, The Court always sought to satisfy itself that a railway company while seeking to promote its own advantages had been using lawful means. The Court would not hesitate to interfere with a railway company which used the means of establishing an inequality that was unreasonable under the circumstances

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[1] Nicholson v. Great Western Ry. Co. (No. 1&2) 1858-1860; 1 Ry. & Canal Traffic Cases, 121, 143; Baxendale. v. Great Western Ry. Co., 1858; 1 Ry. & Canal Traffic Cases, 191; Ransome v. E. C. Ry. Co. (Nos. 1-4) 1 Ry. & Canal Traffic Cases, 63, 109, 116, 155.

[2] Baxendale v. G. W. Ry. Co., 1858; 1 Ry. & Canal Traffic Cases, 211.

and was operating unfairly and injuriously upon particular individuals or that was affording to one person an advantage which it would not afford to another under similar circumstances.[1] It was true that great difficulty and nicety arose in dealing with such cases, but when the railway company subjected others to unreasonable disadvantage, the Court never refused to act.

Closely connected with the question of the interest of railway companies was the free power of making contracts or agreements. The terms which the railway companies would offer to make agreements might appear to show preference or prejudice from one party to another. Agreements for large quantities might be beyond the means of small capitalists; agreements for long distances might be beyond the needs of those whose traffic was confined to home district. But the Court held in the Nicholson case that the power of the railway company to contract was not restricted by these considerations.[2] The free power of making contracts was held to be essential to the railway companies for making commercial profit. They possessed that power as free as any merchants. But the power was restricted under several important conditions. In the first place the agreement must have the only object of a legitimate increase of the profits of the railway companies. In the second place the railway companies must be willing to afford the same facilities to all others upon the same terms.[3] In the third place

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[1] Baxendale v. G. W. Ry. Co., 1858; 1 Ry. & Canal Traffic Cases, 210.

[2] Nicholson v. G. W. Ry. Co., 1860; 1 Ry. & Canal Traffic Cases, 149

[3] Nicholson v. G. W. Ry. Co., 1858; 1 Ry. & Canal Traffic Cases, 121.

the agreement must be clearly shown that it was done in order to prevent a competition with the railway or that there was secured thereby to the company such an amount of traffic as to compensate for making the reduced rates.[1] A railway might enter into a special arrangement to give special privileges but the simple contracting of having all goods consigned to one railway company through their lines and not by water or other means where the purpose is not to prevent a competition with the railway or where there was not secured thereby to the company such an amount of traffic as to compensate for making the reduced rates was still an undue preference.[2] A lower charge would not amount to an undue preference only under certain circumstances such as that when the goods were guaranteed for large quantities and full train loads sent at regular periods with full compensation to the railway company, who granted the lower charge.

The legitimate ground for making reduction was another important factor in deciding whether a preference was undue or unreasonable. If no advantage was due to one party and the advantage was given, the advantage would be an undue preference.[3] When a railway company charged different rates simply to enable one group of traders to compete with another group as their manifest object, the difference in the rates would constitute an undue preference.[4] In the absence of sufficient proof for an adequate motive of making a contract to meet competition or

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1. Garton v. B. & E. Ry. Co., 1859; 1 Ry. & Canal Traffic Cases, 218.
2. Ibid.
3. Ransome v. E. C. Ry. Co., 1857; 1 Ry. & Canal Traffic Cases, 70.
4. Ransome v. E. C. Ry. Co., Ibid, 63, 72, 138.

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opposition, such a contract gives an undue preference even though for large quantities sent regularly.[1] If the view of a railway company was simply to induce parties to engage with the company as their carrier directly to the exclusion of rival carriers, the favor shown in such cases and for such purposes was considered as an undue preference.[2]

The desire to introduce goods into a new market with a special arrangement to carry them at lower rates, as in the Oxlade case where the North Eastern Railway Company wished to introduce coke into Staffordshire was not a legitimate ground to give a preference. The lowering of the rates for such purpose, there being nothing to show that the pecuniary interests of the railway company were effected, was giving an undue preference.[3]

A railway company was justified in carrying goods at a lower rate, if there were circumstances which rendered the cost of carrying less.[4] Suppose 1,000 tons of merchandise could be carried for a lower sum per ton per mile than 100 tons or goods could be carried 1,000 miles at a lower rate than 100 miles, yielding an equal profit in both cases to the railway company, the company was entitled to so regulate the charges as to derive equal profit from both cases. The lowering of the rates charged for larger quantity or the longer distance was not giving

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[1] Garton v. B. & E. Ry. Co., 1859; 1 Ry. & Canal Traffic Cases, 225.
[2] Ibid.
[3] Oxlade v. N. E. Ry. Co., 1857; Ibid,72.
[4] Ibid; Harris v. C. & W. Ry. Co., 1858; Ibid, 97.

an undue preference.[1] The railway company in fixing rates could consider the whole profit and not the mere profit per mile. In order to inducepeople to carry more and longer on their line, the railway company could agree to make certain reductions in their rate charged.

Those circumstances which rendered a difference in the cost of carrying, might be of a general or of a local or technical character either in the nature of operation or of the traffic. The most common circumstances under which a preference might be justified were the working of a particular portion of the railroad; regularity and certainty of traffic; through, local and intermediate traffic; the working of competition at certain places; traffic of a large quantity at a smaller per unit cost; and the long and the short distance traffic.[2] Circumstances which were wholly distinct from and would not affect the price or profit of the carriage was not taken into account in determining whether the preference was undue.[3] The Court did not recognize the opposition of a threatened construction of a tramway to divert the traffic of a railway company, as a sufficient ground to justify a variation in the rate of charge. The guiding principle of the Court in judgung whether a circumstance could be legitimate ground for justifying preference depended on whether or not it would affect the cost of conveyance.[4]

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[1] Ransome v. E. C. Ry Co., 1 Ry. & Canal Traffic Cases, 69.
[2] Harris v. C. & W. Ry Co.; 1 Ry. & Canal Traffic Cases, 102.
Oxlade v. N. E. Ry. Co.; 1 Ry. & Canal Traffic Cases, 83.
[3] Baxandale v. G. W. Ry. Co.; Ibid, 200.
[4] Ransome, v. E. C. Ry. Co.; Ibid, 71, 120.

The grouping of districts together with a uniform scale of charges might be justified, if it did not subject any one of the districts to disadvantage, nor it appeared to be disadvantageous to the public at large or objectionable in other respects.[1] But if the effect of such a scale of charges was to diminish the natural advantages by annihilating in point of expense of carriage, a certain portion of the distance, just in proportion by which that natural advantage was diminished, an undue preference was given.[2]

Cases which involved charges incidental to conveyance were ruled under the same principle of undue preference. Rates for conveyance and charges for collection and delivery were by nature, separate. The railway companies were not allowed, as in the Baxendale (Reading case) to combine them into one charge for the purpose of compelling persons to employ the company to collect or deliver such goods and thus to secure the business to the company as well as to give an undue preference to one party in competing with another.[3] The Court held that though no profit was made in a charge including delivery and collection, yet the system of not making the charges separately was an undue preference to those persons who did not wish to have their goods collected and delivered for them by the railway company.[4] A railway company had no right to impose a charge for the conveyance of goods to or

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[1] Ransome v. E. C. Ry. Co.; 1 Ry. & Canal Traffic Cases, 111.
[2] Ibid; Ibid, 114.
[3] Baxendale v. G. W. Ry. Co.; Ibid, 212.
[4] 1 Garton v. G. W. Ry. Co., 214; Baxendale v. G. W. Ry. Co.; 1 Ry. & Canal Traffic Cases. 212.

from their station where the customer did not wish such services to be performed by them.[1] If a railway company gave special facility or advantage to their own agents and not to others, such as a station which was closed to the public except the agents of the company after a definite time, as in the Garton v. the Bristol and Exeter Railway Company case, this facility or advantage was considered as an undue prejudice to those who did not wish to have their goods conveyed through the hands of the company's agents.[2] The law made it the duty of the railway company to receive and deliver goods and not to throw difficulties in the way. The Railway and Canal Traffic Act, 1854, gave the consignees the right to receive their goods at the station without being obliged to employ any intermediate hands. It was not lawful for a railway company to give an advantage to themselves over other carriers in the carriage of goods to and from the station, as in the Parkinson case.[3]

The effect of the decisions by the Court of Common Pleas had been summarized by the Joint Committee of 1872. A railway company was bound to give the same treatment to all persons equally under the same circumstances but there was nothing to prevent a railway company if acting with a view to its own profit, from imposing such conditions as might incidentally have the effect of favoring one class of traders or one town, or one portion of their traffic, provided the conditions were same for all persons and were such as lead to the conclusion that they were really imposed for the

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1. 1 Garton v. B. & E. Ry. Co., 218.
2. 1 Garton v. B. & E. Ry. Co., 218; Baxendale v. G. W. Ry.; 1 Ry. & Canal Traffic Cases, 212.
3. Parkinson v. G. W. Ry. Co.; 1 Ry. & Canal Traffic Cases, 280.

benefit of the railway company.[1]

No important complaints had been made of the inadequacy of the existing accomodations except in two cases,[2] which were not of much importance.

The Regulation of Railways Act, 1868.

The Regulation of Railways Act, 1868, was generally included as one of the Traffic Acts, but it had more to do with finance than rates. The Act as passed was divided into seven parts: 1 and 2, accounts, audit, etc.; 3, provisions for safety of passengers; 4, compensation for accidents; 5 and 6, light railways, and 7, miscellaneous. Fares and rates were to be posted and to be charged all alike.[3] The provisions of the Traffic Act, 1854, regarding the above were extended to include steam vessels. A railway company was required to distinguish a charge, on application, how much for conveyance and how much for terminal services.[4] In case of through traffic the distance was to be reckoned continuously as on one railway.[5] The power of appointing arbitrators and fixing renumerations was given to the Board of Trade.[6]

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[1] Report of the Select Committee, 1872, 213, P. XIII; also Report of the Royal Commission, 1867, P. XLIX.
[2] 1. Oxlade v. N. E. Ry. Co., 73; 162; 1 West v. L. & N. W. Ry., 167, L. R. S. C., P. 622.
[3] Act, 1868, s. 15, 16.
[4] Act, 1868.,S. 17.
[5] Act, 1868, S. 18.
[6] Under the Railway Company Arbitration Act, 1859, Board of Trade possessed the power of appointing arbitrator or umpire only when the railway companies failed to do so; renumeration was left in the discretion of the arbitrator and to be paid by the companies equally.

CHAPTER VII.

The Regulation of Railways Act, 1873, and the Work of the Commissioners appointed under it.

The events that led to the passage of the Regulation of Railways Act in 1873 were in general the same as those of 1854. The rate problem was, however, much more acute.[1] Competition among railway companies and between railway and canal companies was less effective. Amalgamation in spite of the various reports against it was still going on. Railway rates had gone up considerably.[2] The question of undue preference was still unsolved, interchange of traffic was almost as difficult as in 1854. There was apparently no way of maintaining competition as an effective regulator.[3] In 1872 as in 1853 there were again many Bills in Parliament seeking amalgamation, only on a much larger scale. One Bill was petitioning for an amalgamation of the London and North-Western Railway Company with the Lancashire and Yorkshire Railway Company.[4] Competition, in charges at all events, was almost extinct. The imperative and immediate necessity of maintaining the remaining portion of that valuable competition in route, in accomodation, in facilities, and in all those advantages which would result from having two or more parties to deal with on the side of the public instead of one, was evident to all.[5] Traffic was not always al-

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[1] Westminister Review, 1866, PP. 297-331; Edinburgh Review, 1857, V. 105, PP. 242-266; 1858, V. 107, PP. 396-419; Fortnightly Review, 1873, PP. 557-580; Quarterly Review, 1873, V. 134, PP. 195-207.
[2] Quarterly Journal of Economics, 1894, V. 8, P. 283; Economist, 1868, P. 145, 645.
[3] Han. 214, P. 241; 215, P. 1545; Economist 1872, April 13, P. 450.
[4] Han. 214, P. 229.
[5] Han. V. 214, P. 231.

lowed to take its proper routes; the shortest and best routes were often artificially barred by the imposition of prohibitory tolls. These tolls, like the "bar tolls" on canals, were imposed for the express purpose of diverting traffic from its natural and proper courses.[1] The constitution of a Railway Commission and legislation on "undue preference" and "unreasonable facilities for through traffic," led again to the postponement for nearly twenty years of the direct regulation of railway rates.[2]

Between 1854 and 1873 two valuable reports on railways were made; the first by the Royal Railway Commissioners in 1867 and the second by the Joint Select Committee on railway amalgamation in 1872.[3] The inquiries went into questions of railway charges, amalgamations and railway legislation. They all recommended that the principle upon which was based the Railway and Canal Traffic Act, 1854, was sound but that its enactment was defective, chiefly in two respects.[4] In the first place the railway companies did not have the power to make through rates and in the second place, theact could not be efficiently discharged by the ordinary Court of Law such as the Court of Common Pleas. A new tribunal for encouraging the public to make complaints of unjust use of their great powers by the railway companies should therefore be created. The original recommendation on this by the Select Committee of 1872 is worth quoting.

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1. Han. V. 214, P. 241.
2. Quarterly Journal of Economics, 1894. V. 8, P. 286.
3. Economist, Aug. 17, 1872, P. 1013; Comments on the Report of 1872.
4. Report of the Commissioners, 1867, V. 38, P. LXXVI; Report of the Joint Select Committee, 1872, V. 13, P. XIV.
5. Joint Select Committee Report, 1872, V. 13, P. LIII.

"To perform the various duties referred to in this report, a special body should consist of not less than three members. They should be persons of high standing, of whom one should be an eminent lawyer, and one should be thoroughly acquainted with the details and practices of railway management.

"Their effect will be:

"1. To preserve the competition which now exists by sea.

"2. To give immediately such support as is practicable to competition by canal; and both immediately and ultimately to develop and utilize the capabilities of canals.

"3. To let the public know what they are charged and why they are charged; and to give them better means than at present exist for getting unfair charges remedied.

"4. To enforce the harmonious working and development of the present railway and canal systems so as to produce from them the greatest amount of profitable work which they are capable of doing."

The Select Committee further recommended that every railway company should be bound to make a through rate for goods over every other company's line.[1] The proposal of giving every railway company general compulsory running powers over the lines of every other, was rejected on the same grounds as those taken by the Select Committee of 1853.[2]

As a result of these reports, Mr. Chichester Fortescue, Chairman of the Select Committee of 1872, moved in 1873 to bring in a Bill to make for better provision for carrying into effect the

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1. Report, Joint Select Committee, V. 13, 1872, P. XIV.
2. Fourth Report, 1853, P. 6.

Railway and Canal Traffic Act, 1854.[1] The Bill was founded upon the report of the Joint Committee and in principle did not differ in principle from the Act of 1854. The objects of that act were to secure uninterrupted facilities for the convenient interchange of traffic from one system to another and to observe especially the rule of equal charges under the same circumstances.[2] But as to securing the equal treatment of railway companies by railway companies or the free and uninterrupted forwarding of traffic over all the lines which Parliament had sanctioned, the success of the Act had been most imperfect. In controlling the dealings of railway companies, the Act had been to a great degree a dead letter. This want of success was in the opinion of the Committee, as we have said,due to two defects. What the new Bill aimed at was only an improvement in these two important respects, namely the lack of more specific enactments within the Act itself and the want of an authority better fitted than the Court of Common Pleas for putting the Act in motion and carrying its intentions and provisions into effect.[3]

Experience since the passing of the Railway and Canal Traffic Act, 1854, had very conclusively shown that a Court of Law was not an authority fitted for giving effect to an Act so peculiar and special as the Railway and Canal Traffic Act.[4] The reason that Parliament made use of the Court of Common Pleas in the Act was at that time there was a distinguished Judge - Chief Justice

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1. Han., 1873, V. 214, P. 229.
2. Han., 1873, V. 214, P. 233.
3. Han., 1873, V. 214, P. 234.
4. Han., 1873, V. 214, P. 230.

Jervis of the Court of Common Pleas - who, differing from all his brethern, thought that his own Court could undertake the task in spite of the protests of other judges that it was not a code. Lord Campbell, a famous judge, confessed in Parliament that he knew not what was a reasonable fare or what was an undue delay.[1] His prediction was found to have been entirely fulfilled. At the end of 19 years it was thought that it would be well to take his advice to remove this jurisdiction from the Court of Common Pleas to some other tribunal. The Bill proposed to create such a tribunal in the form of Railway Commissioners. In the second place, instead of granting general compulsory running powers, the Bill, following the recommendations of the Select Committee, proposed that under proper conditions, every railway company should have a right to require and obtain through rates over the lines of every other railway company. As the question of determining and apportioning the through rates was a very vexatious one, the Bill proposed to invest with the Railway Commissioners ample power to settle this matter among the railway companies. The large powers of the Railway Commissioners over through rates was urged more on the ground of necessity and expediency than of any correct principle. It might be criticized as an unjust interference which had for its object the prevention of that kind of charge which was imposed in order to close a route against traffic not by a physical, but by a fiscal obstacle, the object of that charge being to direct traffic over a course more profitable to the rail-

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[1] Han. 1855, V. 133, P. 1137.

way company.[1] Besides, the making of through rates must be to a great extent at the discretion of the railway company. Through rates might be fixed according to mileage, but that was a rule which was not capable of being always rigidly observed. So the Bill proposed that every railway company should have power to make through rates. If the rates were objected to, the Railway Commissioners should have power to allow or refuse them. The Bill also proposed to transfer the power of private arbitration, as hitherto exercised under the special railway acts, to the Railway Commissioners.[2]

The Bill, after long discussion in both Houses, finally received the Royal assent on July 31, 1873 and became the Regulation of Railways Act, 1873.[3] The Act as passed was divided into five parts: first, the method of appointment and the specification of the duties of the Railway Commissioners; second, amendment of the law; third, conveyance of mails; fourth, regulations as to the work of the Railway Commissioners, and fifth, miscellaneous. A year later, by the Board of Trade Arbitrations, etc. Act, 1874,[4] powers were given to the Railway Commissioners to hear and decide cases by arbitration;[5] and the Board of Trade could appoint Railway Commissioners to be arbitrators or umpires.[6] This part of the Act is usually construed, together with the Act of 1873 and 1874.[7] The Regulation of Railways Act, 1873, as originally pro-

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[1] Han., 1873, 214, P. 238.
[2] Han., 1873, V. 214, P. 240.
[3] 36 and 37, Vict. C. 48.
[4] 37 and 38, Vict. C. 40.
[5] Ibid, Section 7.
[6] Ibid, Section 6.
[7] 37 and 38, Vict C. 40 Sect. 8.

posed, was to be in force only five years as a sort of an experiment.[1] The work done by the Railway Commissioners, however, was so satisfactory and found so necessary that the provisions of the Act were continued in force until the end of 1882 by the Regulation of Railways Act of 1873 and 1874, Continuance Act, 1879[2], and was subsequently continued again to 1888. It was finally displaced by the Railway and Canal Traffic Act, 1888.

As to the provisions of the Act, two points need detailed description; the rest are either out of the scope of our inquiry or are not of suffiicent importance. The first is the revision and amendment of the Railway and Canal Traffic Act, 1854 and the second, the organization and the powers of the Railway Commissioners. The eleventh section of the new law revised the second section of the Railway and Canal Traffic Act, 1854. Reasonable facilities were now interpreted so as to include those at through rates, Every railway company was given the power to propose or to object to a through rate. The Railway Commissioners were to consider and decide, if any objection were made whether the granting of the through route were reasonable. In deciding disputes arising out of the apportionment of through rates, the Railway Commissioners were to take into consideration all the circumstances of the case, including operating conditions. No railway company should be compelled to accept a lower mileage rate than the mileage rate which the railway company was charging for like traffic carried by a like mode of transit on any other line of communi-

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[1] 37 and 37, Vict.C. 48 Sect. 37.
[2] 42 and 43, Vict.C. 56.

cation between the same points, being the points of departure and arrival of the through route. The power of making complaints was extended to include local authorities and public corporations.[1] At every station, books should be kept, showing every rate charged from that station to every other station and must be open to public inspection without the payment of any fee.[2] The Railway Commissioners on the application of any person interested might order the railway company to distinguish in the rate book how much of each rate was for the conveyance, including tolls for the use of the road, of carriages or locomotive power and how much for other expenses, specifying the nature and detail of such other expenses.[3] Power to fix terminal charges and to determine what would be a reasonable sum for services incidental to conveyance, was granted to the Railway Commissioners.[4] Any agreement between railway and canal companies must be sanctioned in order to be valid.[5] Canals owned by railway companies must be maintained in good working order.[6]

The Railway Commissioners were to be composed of three Commissioners, of whom one must be of experience in law and one in the business of railway and two assistant commissioners might be appointed. The Lord Chancellor could remove any one of the three commissioners for inability or misbehavior.[7] The salary of a

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1. 36 and 37, Vict. C. 48, Section 13.
2. Ibid, Section 14.
3. Ibid, Section 14.
4. Ibid, Section 15.
5. 36 and 37, Vict. C. 48, S. 16.
6. Ibid, S. 17.
7. Act, Section 4.

Commissioner was fixed at three thousand pounds a year.[1] In the exercise of any jurisdiction in the Act, the Commissioners might call in the aid of one or more assessors of engineering or other technical knowledge.[2]

The Commissioners were empowered to hear and determine all the complaints under section two of the Railway and Canal Traffic Act, 1854 and 1873 or under section 16 of the Regulation of Railways Act, 1868. They could exercise all the powers conferred by section three of the Traffic Act, 1854, on the several Courts and Judges empowered to hear and determine complaints under that Act.[3] The Commissioners might communicate the violation of law to the railway company before requiring any formal proceedings.[4] The approval of working agreements and the supervision of railway companies as to their powers in relation to steam vessels, formerly exercised under the Railway Clauses Act, 1863, Parts 3 and 4 respectively were now transferred from the Board of Trade to the Railway Commissioners. In the case of any differences between the various railway companies the disputes might be referred to the Commissioners for its decision in lieu of being referred to arbitration.[5]

Any objection regarding through rates or routes must be referred to the Commissioners for hearing and decision.[6] The Com-

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1. Act, Section 22.
2. Ibid, 23.
3. Ibid, 6.
4. Act, Section 7.
5. Ibid, 8, 9.
6. Ibid, 4.

missioners were to have full power to decide whether a through rate was reasonable and to make apportionments.[1] The decision of the Commissioners as to the apportionment of through rates were to be "retrospective." Disputes in matters of terminal charges could be determined by the Commissioners and they could decide what was a reasonable sum to be paid for loading and unloading, covering, uncovering, collection, delivery and other services of a like nature.[2]

It would be within the jurisdiction of the Commissioners (1) to decide all questions whether of law or of fact, (2) to prosecute inquiries and to make inspection either personally or by appointment of a person as substitute, (3) to require the attendance of any person as a witness, and (4) to require the production of all books, papers and documents.[3] Any decision or order of the Commissioners might be made a rule or order of any Superior Court. But the Commissioners might review and rescind or vary any previous decision or order made by them.[4] Every decision and order of the Commissioners should be final except in the case of appeal on a question of law. On points of law, the Commissioners, at the instance of any party to the proceedings before them, might state a case in writing for the opinion of any Superior Court. The order of the Superior Court to which the case was transmitted, should be final and conclusive to all parties. The costs of any proceeding before the Commissioners would be fixed at the dis-

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1. Act, Sections 11, 12.
2. Act, Section 15.
3. Act, Section 25.
4. Ibid, 26.

cretion of the Commissioners.

The duties of the Assistant Commissioners were to make inquiries and reports and to perform other services as directed by the Commissioners.[1] They might be authorized to undertake certain kinds of arbitration.

In the Regulation of Railways Act, 1873, for the first time, a power to hear and determine disputes with respect to terminal charges was given to the Railway Commissioners.[2] As the question of terminal charges has important bearings on English railway charges, it will be of great help to the understanding of the whole rate problem to examine its nature and origin. In the early days when railway companies were only owners of lines, there was no question of terminal charges. Later, as railway companies became common carriers as well as owners of lines, they were sometimes enabled by words in their special acts to make, in addition to the toll or rate per mile for conveyance, some additional charges for services in connection with the conveyance. Railway companies further held that they were authorized by Acts of Parliament to make additional charges for the expense of constructing terminal stations, sidings as well as working them.

The question of terminal charges involved three different contentions,[3] the first being terminal station charges; the second, terminal service charges; and the third, special terminal charges. Terminal station charges, usually called "station terminals", are

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[1] Act, Section 21.
[2] Act, 1873, S. 15 .
[3] Report, Select Committee, 1882, P. XXXIII; Report on Classification, 1890, V. 64, P. 10, 13.

charges made for the use of the accomodation at stations and duties undertaken thereat, before and after conveyance. In through traffic, it means the sum allowed, where goods pass over two or more lines at through rates,to the company owning the station at which the goods have been received and to the company owning the station at which the goods have been received and to the company owning the station where the goods are delivered. The terminal service charges, usually called "service terminals," are charges made for actual services other than haulage performed in connection with conveyance. Generally these are charges for loading and unloading; covering and uncovering; collection and delivery. The special terminal charges, sometimes known as simply special charges, are charges made by railway companies for services other than station terminals and service terminals. They are charges for the use of sheds, platforms, warehouses, cranes, turntables, weighing machines, hydraulic press, and the working thereof, including repairs, renewals and insurance and for clerkage, stores, shunting, gas and taxes. These three include charges for every expense incidental to conveyance. Railway companies have always claimed the right to charge these terminals; they asserted that the right was based not only on the words of particular sections of particular statutes but also on the general recognition of that general right to be paid for accomodation which they provide and services they render.

In the special acts, Parliament had not expressly given the railway companies the right of making terminal charges, nor had it stated definitely what terminal service could be charged for

or how much for each. About 1841, the "short distance" clause took the following form, viz:

"For articles and persons conveyed a less distance than six miles, the companies may demand, in addition to the tolls and charges, a reasonable charge for the expense of stopping, loading and unloading."[1]

Judging from this clause, Parliament seemed to intend that originally the maximum mileage rates for distances beyond six miles were to cover all services of loading and unloading. The "short distance" clause was put in as a means of renumerating a railway company in those cases where the traffic was carried so short a distance that the mere mileage rate would not cover expenses of this nature. Subsequent legislation pointed out that this interpretation was not quite correct. Parliament recognized a charge for services performed at the station in addition to the mileage rate, Some of the later Acts read as follows:

"A reasonable sum for loading, unloading and covering, and for delivery and collection of goods, and other services incidental to the business of a carrier, and a further reasonable sum for warehousing and wharfage and for the extraordinary services which may be reasonably and properly performed by the railway companies."[2]

Some railway companies were given power to charge, in addition to these tolls and charges such as for loading, covering, etc., a reasonable sum for the use of station and sidings.

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1. Report of the Royal Commission, 1867, (3844) P. 2.
2. Ibid.

Disputes constantly arose between the railway companies and the public as to the right of railway companies to make terminal charges. A Bill was introduced by the railway companies, first in 1865, and again in 1866, to give them statutory authority to make terminal charges but it failed to pass.[1] The Royal Commission, 1867, urged that it was extremely desirable that some general rule should be laid down by Parliament as there was great diversity in the working of the clause relating to terminals in the special acts.[2] The Select Committee of 1873 reported that the law as to terminals was absurd and recommended that Parliament should distinctly recognize not only service terminals, but separate terminals. They also expressed the opinion that it was not desirable to fix a maximum, because it must necessarily be fixed at a higher rate than the actual charge.[3] Hence, power was given to the Railway Commissioners in the Act of 1873 to hear and determine disputes with respect to terminal charges without attempting to formulate a precise law.

But the contention regarding terminal charges was not ended by giving power to the Railway Commissioners to hear and determine the disputes for we find it carried over to 1888 and again to 1891 and 1892. The traders contended that railway companies had no right to make terminal charges, and that maximum rates included all terminal charges and charges for station accomodations, use of sidings and wharves. They complained that when rates were

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[1] Report of the Royal Commission, 1867, PP. XXII, LXVII.
[2] Ibid, P. LXVII.
[3] See Han., 1888, V. 323, P. 1031. Herapath's Railway Journal, V. 50, March 17, 1888, P. 290.

not kept down by competition, railway companies were enabled to use the terminal charges as a means of levying on shippers more than the maximum rate. In 1888 they wanted a distinct clause in the Railway and Canal Traffic Bill. The railway companies, on the other hand, pointed out that many millions had been spent in erecting sidings, wharves and warehouses. They expected to be repaid for their outlay by terminal charges. It would be unreasonable to sweep away all terminal charges without paying regard to the different circumstances sanctioned by different Acts of Parliament. In short distance traffic it would be impossible to make rates cover terminal charges. The right of making terminal charges was definitely recognized by the decision of the Hall case[1] in 1885, but as to the nature and amount of these charges, they were settled only after the passing of the Provisional Orders Acts of 1891 and 1892.

Analysis of the Decisions of the Railway Commissioners, 1873-1888.

The principal object of the Regulation of Railways Act , 1873, was the constitution of Railway Commissioners to facilitate recourse to the Railway and Canal Traffic Act, 1854. The change did produce the effect anticipated, for in the three years between 1873 to 1876, there were already as many applications under the Railway and Canal Traffic Act, 1854, section 2, as there were between 1854 and 1876.[2] Not only then was an increase in the num-

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[1] See Ante, P. 159-161.
[2] Third Annual Report of the Railway Commissioners, 1877, V. 27 (c 1699) P. 1.

ber of complaints against the company but also the interpretation of the law as given by the Commissioners showed some important differences. We shall examine here the important decisions on undue preference, through rates, disintegration of rates, and terminal charges. Special attention will be given to the interpretation of the law and the principles upon which cases were decided.

The Regulation of Railways Act, 1873, left the question of undue preference untouched except that Section 11 amended section 2 of the Railway and Canal Traffic Act, 1854, by extending its operation to steam vessels and their traffic. Cases on undue preference were decided by the Railway Commissioners under substantially the same principles as those adopted by the Court of Common Pleas, but there were some important deviations. According to the Act of 1854, charges on traffic using the same railway under the same circumstances ought to be after the same rate per ton per mile. But the interpretation as given by the Court and Commissioners did not render the law so rigid that any scale which was not in conformity with it was illegal.[1] A preference might be due or undue and the rates were lawful or contrary according to the nature of the preference in respect of its being due or undue, reasonable or unreasonable.[2] Reasonableness was held to be a question of fact to be decided in each particular case. A preference meant a preference over some others, but to be an undue preference it must be a preference at the expense of others.[3]

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[1] Denaby Main Colliery Co. v. M. S. & L. Ry. Co., 1880; 3 Ry. & Canal Traffic Cases, 429.
[2] Rhymney Iron Co. v. R. Ry. Co., 1888; 6 Ry. & Canal Traffic Cases, 60.
[3] Skinningrove Iron Co. v. N. E. Ry. Co., 1887; 5 Ry. & Canal Traffic Cases, 244.

A lower rate might be a reasonable one, as held by Commissioner Peel in the Skinningrove Iron Co. case, provided it is not injurious to the public or to the individual.[1]

An unequal rate must be justified on some ground of commercial advantage to the carrying company or it must be undue and unreasonable.[2] The Commissioners in hearing and determining a case of undue preference took into consideration either whether the traffic was able to be carried at a less cost to the railway company than the others, or whether the traffic was under different conditions as regards competition of routes or other special circumstances.[3] The railway company in fixing rates was justified to take local circumstances more or less into account.[4] What would justify a preference might be considered under three principles; 1. Cost of working; 2. Competition; 3, Interest of public.

The first factor that may justify a difference in the cost of carriage is the difference in the cost of carrying and handling the traffic. The Commissioners held in the Nitshill and the Lesmahagow Coal Company case that if by reason of gradients or otherwise, the cost of conveyance on the one railway was different from the cost on the other a proportionate difference might be made in its mileage rate.[5] Greater cost of handling traffic might justify a difference in the charges to a certain

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1. Skinningrove Iron Co. v. N. E. Ry. Co., 1887; 5 Ry. and Canal Traffic Cases, 244
2. Ibid.
3. Ibid.
4. Broughton v. G. W. Ry. Co., 1882, 1883; 4 Ry. & Canal Traffic Cases, 191.
5. Ibid.
6. Nitshill & Lesmahagow Coal Co. v. Caledonian Ry. Co., 1874; 2 Ry. & Canal Traffic Cases, 39

extent.[1] In connection with the cost of handling the traffic, considerations on such questions as the average weight of truck load, certainty of backload, etc., could be taken into account,[2] as in the Girardot, Flinn and Company case.

The second element that may justify a difference in the cost of carriage was distance. It was ruled in the Broughton and Plas Power Coal Company case, that a difference in the distance the traffic was carried was not of itself valid justification of undue preference.[3] Distance only under certain circumstances and within certain limits, was a recognized factor in the difference of charges. A railway company might be justified to make rateable charges according to distances.[4] A group rate would not be a violation of law, but if the grouping system was carried too far, it might subject traders to an undue or unreasonable disadvantage.[5]

Quantity of traffic,and certainty and regularity in shipment might justify differences in the cost of carriage. If a trader engaged to supply traffic with regularity and certainty in a large quantity for the accomodation of a railway company so that a lower rate in his case was renumerative to the railway company as a higher rate, such an arrangement would not be a violation of the Railway and Canal Traffic Act, 1854.[6]

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[1] Girardot, Flinn and Co., v. Midland Ry. Co., (No. 2) 1885; 5 Ry. & Canal Traffic Cases, 60.
[2] Girardot, Flinn and Co., v. Midland Ry. Co., 1883, 1884; 4 Ry. & Canal Traffic Cases, 291.
[3] Broughton v. G. W. Ry. Co., 1882, 1883; 4 Ry. & Canal Traffic Cases, 191.
[4] Denaby Main Colliery Co., etc., 440.
[5] Ibid,432.
[6] East and West Junction Ry. Co. v. Great Western Ry. Co., 1875; 2 Ry. and Canal Traffic Cases, 147, 153.

Messrs. Flagsollet Freres guaranteed to send between Boulogne, Quay and London by the South Eastern Ry. Company's steamers and railway, 850 tons of goods each calendar month. In consideration of the agreement the railway company allowed Messrs. Freres certain reductions in rates. Upon complaint by Greenop and others, it was held that as there were circumstances which enhanced the value to the railway companies of the guarantee of quantity, certainty and regularity and compelled the traders who guaranteed them to incur considerable expense and labor to earn the allowance and as the railway companies were ready to contract with other traders on similar terms, no injustice had been done.[1] Although quantity was a factor in the cost of carriage, yet a difference of charge could not be sustained on the general ground that the aggregate traffic of one town exceeded that of the other, provided that nothing exceptional in the natural position affecting the charge.[2]

Competition might justify a difference in charge. The three preceding factors would cause a difference in the cost of carriage. Competition and public interest might not cause a difference in the cost of carriage, but they would be, nevertheless, factors which might justify a preference. The decision on the two latter principles were not very clear at this period; they assumed more importance after 1888. The primary consideration in applying these two principles was still whether they would affect the cost

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1. Greenop v. South Eastern Ry. Co., 1876; 2 Ry. & Canal Traffic Cases, 319.
   Richardson v. Midland Ry. Co., 1881; 4 Ry. & Canal Traffic Cases, 1.
2. Girardot, Flinn and Co. etc., 290.

of carriage. Competition would justify a preference, if it affected also the cost of carriage. Public interest had not yet assumed a distinct principle. Where it appeared, the interest of the railway company had the first consideration.

Competition could justify a difference in charge only under certain circumstances.[1] A railway company must not merely for the sake of increasing traffic, reduce rates in favor of individuals unless there was sufficient consideration for such reduction, lessening the cost of conveyance to the company.[2]

The mere desire to enable a railway company to compete with water carriage, would not justify an undue preference. In the Budds case,[3] the London and North Western Railway Company charged Ystalyfera Iron Company, which was nearer to the competing market, Liverpool, a higher rate (12 s, 6 d and 11 s , 4 d per ton for the carriage of iron and tin plates) than was charged the manufacturers whose works were situated within a radius of six miles from the seaport of Swansea and thus further from Liverpool by rail. There was communication by sea between Swansea and Liverpool. The Commissioners held that the lower rate was not justified.

The intention of enabling one trader to compete with another would not be a sufficient justification of a lower charge.[4] Disadvantage of a trader in his competition, arising out of a lower

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1. Foreman v. Great Eastern Ry. Co., 1875; 2 Ry. & Canal Traffic Cases, 202; Denaby Main Colliery, etc., 426.
2. Thompson v. L. & N. W. Ry. Co., 1875; 2 Ry. & Canal Traffic Cases, 115, 121.
3. Budd (P. O.) v. L. & N. W. Ry. Co., 1887; 36 L. T. (N. S.); 802; 25 W. R. 752; 4 Ry. & Canal Traffic Cases, 393.
4. Skinningrove Iron Co. etc., 244.

charge, without any commercial advantages to the railway company would render the preference concerned unreasonable and undue.[1]

Goods which were competitive and substitutive must be charged equally, although their differences in the separate charges might not amount to an undue preference. For an example splint and cannel coal had enough in common of gas-producing quality to be competitive; the carriage of them at unequal rates was ruled in the Nitshill and Lermahagow Coal Company case as undue preference. The same principle was applied to the carriage of such goods as grain and flour in the James Greenwood and Sons case. A difference in the mileage rates for grain carried for competing millers when taken in connection with the fact that the flour of these millers would compete at various common points, might amount to an undue preference, although the difference in the grain rates when taken alone might not have been sufficient to establish the infringement. If the distance carried was same, a difference in the charge for flour greatly in excess of that of grain would be an undue preference.[2]

When a preference was given for the object of discouraging the construction of a competing line, the preference was undue, even though the trader might have agreed to send all his goods over the company's line for a fixed number of years.[3] A railway company had no right to use its position to enable it to enter

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[1] Nitshill, etc., 39.
[2] James Greenwood and Sons v. L.& Y. Ry. Co., 1888; 6 Ry. & Canal Traffcc Cases, 39.
[3] Diphwys Casson Slate Co. v. Festiniog Ry. Co., 1874; 2 Ry. & Canal Traffic Cases, 73.

competition with other carriers by giving special advantage to its traffic over that carried by other persons, such as by appointing a special agent to perform the service of carting to the station as in the Menzies case.[1] If a railway company gives a worse service in one direction than it supplied in the other, either in facility or about the hours of trains, the company was guilty of giving an undue preference.[2]

No case had been decided purely on the principle of public interest by the close of this period. Clear opinion had, however, been expressed at least in three distinct cases. Commissioner Peel stated in the Rhymney case that "it is not for the public interest that one railway company should be able by means of differential rates to diminish the accomodation and availability of the railway of another company, or should be able to limit the freedom of consignors or consignees to use either railway as they please or obliged them in their use of one of these railways to use it upon the terms of paying higher rates to the railway company than are paid by others using the same railway."[3] In the Greenop case, the Commissioners held that the plan of delivering goods between London and Paris at one fixed sum for the entire service, and free of any intermediate charges, was a great convenience to the public and did not involve any infringement of the Railway and Canal Traffic Act, 1854.[4] An agreement in order

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1. Menzies v. Caledonian Ry. Co., 1887; 5 Ry. & Canal Traffic Cases, 306, 315.
2. Ashgeshire and Wiglowshire Ry. Co., v. G. & S. W. Ry. Co., etc., 1886; 6 Ry. & Canal Traffic Cases, 26, 29.
3. Rhymney Iron Co., etc., 64.
4. Greenop, etc., 319.

to be valid must not conflict with the public interests. When it was not or went beyond the fair regard which a company might pay to its own interests, the agreement left untouched the rights of all under the law.[1]

When a railway company charged more than it was authorized as specified in its special Acts, the case was to be heard and decided in any ordinary Court of law but not before the Railway Commissioner. A trader might complain of an overcharge as involving a case of undue preference, which would bring the complaint under the jurisdiction of the Railway Commissioner.[2] The Railway Commissioner held that where such overcharges involved the giving of preference or a denial of reasonable facilities, the companies were violating the law. Such cases were overruled by the Court of Appeal. In the Brown case it was stated that the Commissioners had no jurisdiction to entertain the complaint, because the mere fact that a railway company charged beyond the maximum sums contained in their special Act, did not amount to a refusal to afford "reasonable facilities." In the Distington Iron Company case the same jurisdiction of hearing the complaint on an overcharge was also denied to the Commissioners for the same reason.

As to through rates, the Railway and Canal Traffic Act, 1854, section 2, gave a shipper a right to require any number of railway companies in Great Britain to combine to form a continuous route by

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1. Dipwys Casson Slate Co., etc., 79.
2. Brown v. Great Western Ry. Co., 1883; 4 Ry. & Canal Traffic Cases, 247.
Distington Iron Co., v. L. & N. W. Ry. Co., etc., 1889; 6 Ry. and Canal Traffic Cases, 108.

which his traffic might be sent at a single booking and for a single payment.[1] In 1873 the Regulation of Railways Act amended the law as to reasonable facilities under the Railway and Canal Traffic Act, 1854, to include through rates under certain conditions.[2] The law limited that only a railway company, not a shipper, could apply for through rates. The object of the law was to prevent rates being raised merely as a consequence of amalgamation so far as that could be done by regulating the charges on through traffic and to cause railway companies to adjust their rates with reference not alone to their own interests, but to the interests of other companies as well.[3]

Through traffic meant all traffic that was not local - and local traffic could only include traffic which began and ended on the same line.[4] It was the traffic for which a certain railway company provided the shortest and most convenient route. A through rate was not a rate per mile at all.[5] It was a gross sum of a small amount for conveyance over a long route. The amount of a through rate was not supposed to vary proportionally with slight differences of distance.

A through rate must fulfill two conditions; first, whether the route was a due and reasonable facility in the interests of

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1. Great Western Ry. Co., v. S. & W. & S. B. Ry. Co., etc., 1886, 1887; 5 Ry. & Canal Traffic Cases, 170, 171, 182, 189.
2. Act, Section 11 and 12; Severn and Wye and Severn Bridge Ry. Co. v. G. W. Ry. Co., (No. 11), 1886; 5 Ry. & Canal Traffic Cases, 156, 158.
3. Great Northern Ry. Co., v. B. C. Ry. Co., etc., 1880; 3 Ry. & Canal Traffic Cases, 411.
4. Eastern and Midlands Ry. Co., v. Midland Ry. Co., (No. 2) 1887; 5 Ry. & Canal Traffic Cases, 235.
5. Lloyd v. N. & B. J. Ry. Co., 1878; 3 Ry. & Canal Traffic Cases, 259.

the public; and second, whether the route was a reasonable one.[1] When the conditions were fulfilled, the Railway Commissioner possessed power either to allow the through rate or to refuse it.[2]

It would be to the interest of the public that there should be at least two through routes open between any two given places.[3] Shippers would be entitled to have their traffic conveyed by the route of any railway company.[4] Public interests might not be merely in the best route even though the route was to be judged from the point of a trader. It would be sometimes to the public interest in favor of the existence of an alternative route at equal rates. Between the two or more through routes there must not be simply mere paper competition but actual competition.[5]

The Swindon, Marlborough and Andover Railway Company formed an alternative route between certain stations on the Great Western Railway and other stations on their own line. The route proposed by the company would affect a great saving in time and distance.[6] Upon an application by the company, the Commissioners allowed the through route and rates as proposed on the ground of public interest. The Commissioner stated that the rates that

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[1] Great Western Ry. Co. etc., 190.
Newry and Armagh Ry. Co. v. G. N. Ry. Co., 1877; 3 Ry. & Canal Traffic Cases, 28.

[2] Great Western Ry. Co. etc., 170, 190.
Newry and Armagh Ry. Co. etc., 28.

[3] Swindon Marlborough and Andover Ry. Co. v. G. W. Ry. Co., 1884; 4 Ry. & Canal Traffic Cases, 349.
Victoria Coal & Iron Co. v. Neath and Brecon and Midland Ry. Co. 1877; 3 Ry. & Canal Traffic Cases, 37.

[4] Victoria Coal and Iron Co. etc., 37.

[5] Great Western Ry. Co. etc., 193; Swindon Marlborough & Andover Ry. Co., etc., 349.

[6] Swindon Marlborough and Andover Ry. Co. etc., 349; Newry and Armagh Ry. Co. etc., 25.

excluded traffic from the shorter of two through routes must be at the expense of the public policy, thereby giving undue preference. The Railway Commissioners never refused a through rate unless it was so high as to make it useless to the public or so low as to prevent the companies from making an equitable apportionment.[1] An important exception should be noted in connection with this.

The interest of the railway company was not to be wholly sacrificed at the interest of the public. A railway company had the right to carry the traffic that it collected as far as it could by its own line and to hand it over to the company which was to forward it at a point most convenient to itself.[2] A railway company could also disregard the order of consignors as to route which the traffic would be actually conveyed, provided the through rate was not affected and no undue preference was caused.[3] If a railway company had more than one through route at its command, it might make use of either one at its convenience without violating the law of undue preference.[4]

In apportioning through rates, as a general rule, it would be reasonable for the railway company having the shorter distance to receive more in proportion than the company having the longer distance.[5] In the case of differences as to the apportionment of a through rate, the differences might either be referred to

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1. Great Western Ry. Co. etc., 170.
2. Ibid.
3. Donald v. N. E. Ry. Co., 1888; 6 Ry. & Canal Traffic Cases, 53.
4. Ashyrshire and Wigtownshire Ry. Co. etc., 33.
5. Severn and Wye and Severn Bridge Ry. Co. etc., 157; Tal-y-llyn Ry. Co. v. Cambrian Ry. Co., 1886; 5 Ry. & Canal Traffic Cases, 122.

arbitrators or to the Commissioners to decide. In arbitration, commissioners would not possess full authority to grant or apportion through rates under the eighth section of the Regulation of Railways Act, 1873, this authority of apportioning through rates was only co-extensive with that of the arbitrators.[1] But when arbitration failed and the dispute was referred to the Commissioners to hear and to decide, the Commissioners would apportion the through rate according to the law mentioned in section 10, subsection 7, the Regulation of Railways Act, 1873.

The Regulation of Railways Act, 1873, section 14, required that railway companies must distinguish a rate and inform the persons interested as how much of each rate in its entirety was for conveyance and how much was for other expenses.[2] The words "specifying the nature and detail of such other expenses" were held to require a railway company to state in the rate book the kinds of terminal services performed and charges for each.[3] The details to be given must be such as to enable one to say whether an expense charged for in the rate was an expense for which the railway company could properly charge and whether the amount charged for that expense was a reasonable amount.[4] Rates must be distinguished, even though the difference was very small.[5]

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1. Greenock and Wemyss Bay Ry. Co. v. Caledonian, (No. 2) 1875; 2 Ry. & Canal Traffic Cases, 136.
2. Watkinson and others v. Wrexham, Mold & Connaks May Ry. Co. (No,3) 1880; 3 Ry. & Canal Traffic Cases, 446.
3. Colman v. G. E. Ry. Co., 1882; 4 Ry. & Canal Traffic Cases, 108.
   Cairns v. N. E. Ry. Co., 1883; 4 Ry. & Canal Traffic Cases, 221.
4. Brichgrove Steel Co. v. Midland Ry. Co., 1887; 5 Ry. & Canal Traffic Cases, 229.
   Bailey v. L. C. & D. Ry. Co., 1875; 2 Ry. & Canal Traffic Cases, 99.
5. Hall & Co. v. L. B. & S. C. Ry. Co., 1884, 1885; 4 Ry. & Canal Traffic Cases, 398.

Rates for parcels must be likewise distinguished.[1] But the railway company was not required under section 14 to show how the through rates quoted by it were divided between the railway companies receiving them.[2]

Under the Regulation of Railways Act, 1873, the Railway Commissioner possessed power to say whether any given service performed by a railway company was one for which a terminal charge could be made. Terminal charges, their kinds and amounts, and not been specified in the special acts. Much was left to the discretion of the railway company and the approval of the Railway Commissioners. In none of the decisions was there a complete statement of all the terminal services which were chargeable. As in the other cases, terminal charges were decided in each instance on the merits of the case; the question was of fact. The right of making terminal charges was definitely recognized in the Hall case.[3]

Messrs. Hall & Co. complained before the Commissioners on February 6, 1884 that the London, Brighton and South Coast Railway company had charged them more than the maximum rate for conveyance. The railway company stated the reason of this to be that they performed various terminal services not covered by the rate of conveyance.[4] For their terminal services they were authorized by their special act to make charges in addition to the

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[1] Robertson v. G. S. & W. Ry. Co., 1876; 2 Ry. & Canal Traffic Cases, 374.
[2] Greenock etc., 140.
[3] Hall & Co. v. L. B. & S. C. Ry. Co.; 4 Ry. & Canal Traffic Cases, 398.
[4] Ibid 5 Ibid.

rate.[1] Messrs. Hall & Co., on the other hand, maintained that the mileage rate for conveyance included most of the terminal services as claimed by the railway company.[2] The Commissioners made separate rulings on each complaint of terminal charges. But the right of making charges for terminals was denied.[3] As the railway company was not satisfied, they appealed to the High Court on June 5, 1886.

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[1] In the special Act, the railway companies were authorized to charge rates not exceeding stated sums per ton per mile and the clause was usually qualified with the following words: "The maximum rate of charges to be made by the company for the conveyance of animals and goods, including the tolls for the use of their railways and wagons or trucks, and for locomotive power, and every other expense incidental to such conveyance, except a reasonable sum for loading, covering and unloading of goods at any terminal station of such goods, and for delivery and collection, and any other service incidental to the duty or business of a carrier, where such services or any of them are or is performed by the company." The London, Brighton and South Coast Railway Company based their right on this clause to make terminal charges.

[2] The terminal services for which the railway company claimed the right to charge were as follows:

a. Loading.
b. Covering and uncovering and use of sheets.
c. Weighing, checking, clerkage, watching, labelling.
d. At Croyden, use of locomotive and haulage across the main line to or from Messrs. Hall & Co.'s private siding to or from the goods yard.
e. Use of the company's wagons off the company's premises.
f. Same as d only at Redhill.
g. At Horley - special shunting.
h. Use and running of company's wagons.
j. Special haulage and supply of empty wagons for loading.
k. Haulage of wagons loaded.
l. Use of wagons before conveyance.
n. Use of locomotives or horses for placing.wagons in position for loading and use of cart roads.
o. Same as n for unloading.
p. Wharfage.
s. For use of station accomodation and sidings.

[3] Hall & Co. Etc., 398.

The decision which was given on April 17, 1886 by the Court of Appeal, upheld the right of the railway company to charge for terminals.[1] The contention involved the correct interpretation of the word "Conveyance" mentioned in the special act, upon which the Railway Commissioner and the Court of Appeal did not agree.[2]

Conveyance was interpreted by the Railway Commissioners in its widest sense as including the whole course of the company's work as a railway carrier from its acceptance of goods brought to it for the purpose of being forwarded to the moment of delivery at the termination of the journey. The words "everything incidental to conveyance" must, therefore, comprise station accomodations and services.[3] This interpretation was overruled. It was pointed out that a railway company in the early days might be a conveyor without being a carrier; conveyance meant nothing more than "finding the highway and the rolling stock or locomotive power.[4]

Mileage rates were held to include every expense "incidental to conveyance," except loading and unloading and such other services.[5] Railway companies were bound under certain exceptions to receive and forward traffic under the mileage rate and free of any charge for terminal services.[6]

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1. Hall & Co. etc., 5 Ry. & Canal Traffic Cases, 28.
2. See the twelfth Annual Report of the Commissioners.
3. Hall & Co. etc., 398.
   Kempson v. G. W. Ry. Co., 1885; 4 Ry. & Canal Traffic Cases,426.
4. Hall & Co. etc.; 5 Ry. & Canal Traffic Cases, 30-38 - judgment delivered by Justices Matthew and Wills.
5. Chatterly v. N. S. Ry. Co.; 3 Ry. & Canal Traffic Cases, 244.
   Coxen v. N. E. Ry. Co. 4 Ibid 284.
6. Walkinson v. W. M. & C. I. Ry. Co.; 3 Ry. & Canal Traffic Cases, 5.

The ordinary station services were considered a part of the services prima facie included in the contract of conveyance. It was held that shunting and marshalling the traffic; finding, providing and maintaining siding accomodation together with facilities for loading and unloading, were not services for which a charge could be made under the maximum rates in the special acts.[2] When a branch line was not a private one, such service as providing, maintaining, and working, signalling and interlocking apparatus should not be charged.[3] No terminal charges could be made for services such as invoicing and taking accounts of consignments, keeping a staff for this purpose and providing and maintaining office accomodations, giving notice to the consignees of each consignment.[4] Weighing, checking, clerkage and watching were services incidental to conveyance and no charge could be made.[5] A charge for warehousing was not a proper ingredient in a railway rate.[6]

The Railway Commission held a distinction between services which were and which were not required by the trader. In the cases where traders wished to do or did perform the terminal ser-

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1. Hall & Co., v. L. B. & S. C. Ry., 28; 15 Q. B. D.; 505; see also the remarks of the Railway Commission in their 12th annual reports. "Some reasons exist for doubting whether it may not be erroneous."
2. Howard v. Midland Ry. Co., 1878; 3 Ry. & Canal Traffic Cases, 253.
   Chatterly v. N. S. Ry. Co. 1878; 3 Ry. & Canal Traffic Cases, 238.
   Lock v. N. E. Ry. Co., 1877; 3 Ry. & Canal Traffic Cases, 44.
   Watkinson and others, etc., 5.
   Isle of Wight (Newport Junction) Ry. Co. v. Isle of Wight Ry. Co., 1882; 4. Ry. & Canal Traffic Cases, 128.
3. Neston Colliery Co. v. L. & N. W. Ry. Co. etc., 1883; 4 Ry. & Canal Traffic Cases, 257.
4. Isle of Wight (Newport Junction) Ry. Co. etc., 128.
5. Berry and others v. L. C. & D. Ry. Co., 1884; 4 Ry. & Canal Traffic Cases, 310.
6. James Greenwood & Sons, etc., 39.

vices, themselves, a rebate was usually ordered.[1] Railway companies were bound to pay a reasonable sum to the person who had performed the collecting services.[2] In deciding whether a terminal charge caused an undue preference, the Railway Commissioners usually went into the detail of the charge. In one case it was held that 9 d. for loading and unloading was excessive and must be reduced to 4-1/2 d.[3] An undue preference was given where a railway company charged one trader 9 d. for the use of the wagons off the line and another trader nothing and a demurrage after 20 hours in the case of the first trader and 30 hours in the case of the second.[4] It was undue preference to charge one trader 1 d. per ton for shunting and to make no such charge on other traders.[5] It would be an undue disadvantage when a railway refused a rebate which was due.

The decisions of the Railway Commissioners showed that the Railway and Canal Traffic Act, 1854 and the Regulation of Railways Act, 1873, received better interpretation in the hands of the Commissioners. Although cost of carriage was still as that in the former period the primary factor in deciding whether a preference would be undue, yet more consideration had been given to such factors as quantity, regularity and certainty. Railway companies were allowed under certain circumstances to open new mar-

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1. Bellsdyke Coal Co. v. North British Ry. Co., 1875; 2 Ry. & Canal Traffic Cases, 105.
2. Menzies, etc., 306.
3. Bell v. L. & N. W. Ry. Co. etc., 1875; 2 Ry. & Canal Traffic Cases, 185.
4. Diphwys Casson Slate Co., 73.
5. Locke, etc., 46.
6. Menzies, etc., 308.

kets by lowering rates, and they could also make a difference in charge to meet competition. The Acts were interpreted much closer to the actual demand of the railway business.

CHAPTER VIII.

The Railway and Canal Traffic Act, 1888.

In the early days railway legislation in England, as we have said, started on the wrong assumption that the railway was a common highway.[1] Railway companies were dealt with more as owners of lines than common carriers. The result of the early legislation was wholly ineffective; the evils of railway business were left unregulated for nearly thirty years. The real starting point of railway rate legislation in England was the passing of the Railway and Canal Traffic Act, 1854. But it was only a partial attempt; it did not reach the heart of rate problem. Regulation against exorbitant charges was not touched at all; the schedule of rates and the classification of commodities being wholly under the power of railway companies, they could make railway charges whatever amount they desired. What was enacted by the Traffic Act of 1854, was but one phase of the question of unequal rates and it was soon found very satisfactory. The passing of the Regulation of Railways Act,1873, did not change the situation much. The railway legislation between 1854 and 1888, was enacted rather more for the purpose of checking combinations as that of the earlier date before 1854 for public safety rather than for lower rates. It might, therefore, be said that the problem of rate regulation in 1888 was the same as that in 1854, or before. It is not surprising, therefore, that the agitation for more restrictive regulation of railway rates had continued to

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[1] Han., v. 312, 1887, P. 129.

increase in strength until it reached the climax about 1888. This was the fundamental cause[1] of the need of passing the Railway and Canal Traffic Act, 1888. The opposition to strict regulation of railway rates was equally great; it took many years to pass the Bill into law, after the failure of several attempts.

The more immediate cause was that about the year 1888 there was great depression in trade and agriculture.[2] Public interest was again centered on the matter of transportion charges, especially excessive and unequal rates.[3] Equal mileage rates were ad

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1. A general idea of the causes may also be gathered from the complaints against railway companies submitted to the Select Committee of 1882. They were given as follows:
"1. That rates in excess of the maximum authorized by the special Acts are in many cases exacted.
"2. That on the same line of railway, higher rates are charged on some kinds of goods as compared with others, although the cost to the company of performing the service is no larger in the one case than in the other.
"3. That in many cases lower rates are charged from goods imported or for export than for the same articles produced or for consumption in this country.
"4. That preferential rates are granted to one port or town as against another.
"5. That rates are now in certain instances, much higher than they were many years ago, and that excessive, although not illegal, rates prevent the development of traffic to the prejudice of the public and of the railways themselves.
"6. That the difficulties in the way of obtaining redress by private individuals against railway companies for overcharge or illegal preference are almost insuperable.
"7. That in consequence of the multiplicity of private Acts, imperfect classification, and defective rate books, it is almost impracticable to ascertain the particular class to which any article belongs, and the rates which the railway companies will charge or authorized to charge for its conveyance. "

Report of the Select Committee, 1882 v. 13, P.III.

2. Han. V. 303, 1886, P. 354.
3. Railway Rates and Fares by Joseph Parsloe: Fortnightly Review, 1875, pp. 75-92; Equalization of Railway Rates; - Fortnightly Review, 1882, V. 38, pp. 174-190.

vocated and proposed[1] in spite of the condemnation by the Royal commission of 1867, and the Joint Select Committee of 1872.

The fight against undue preference was renewed with redoubled strength, when it was charged that foreign products were preferred against home products.[2] A further cause was that the usefulness of the Railway Commissioners was much curtailed by their temporary appointment and restricted power.[3] The Commissioners were really doing good service for the community; their decisions gave general satisfaction to the traders. It was generally believed that they were capable of doing much better and more useful work, if only their positions were strengthened and made permanent. The third immediate cause was that the rate books which railway companies provided under the Regulation of Railways Act, 1873, were not of much assistance to the public in ascertaining the rates which the railway companies were charging.[4] As a rule, different kinds of goods were neither specified nor classified in the rate books, but rates were quoted by classes. To ascertain to which class any particular kind of goods belonged, reference had to be had to a separate book of classification. This increased the difficulty of the investigation, if it did not make the act ineffective, especially as there were numerous exceptions.. There were cases where railway companies refused to exhibit the rate

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1. Han. V. 303, 1886, pp. 355-6, V. 312, 1887, pp 127-128.
2. Han. V. 303, 1886, pp. 557-565
   The Earl of Jersey urged the following amendment:-
   "That no general measure dealing with railway traffic can be considered satisfactory which does not prevent preferential rates in favor of foreign imports."
   Han. 322, 1888, pp. 1796-1800.
3. Han., V. 303, 1886, P. 555; Report of the Select Committee, 1882, V. 13, P. XIII.
4. Report of the Select Committee, 1882, V. 13, P. VII, XX.

and classification books. Charges for conveyance and terminal services were not distinguished as accurately as the trader desired. The public were still unable to know what they had to pay and what their rivals were paying. The necessity for legislation determining what would be reasonable charges for terminal services was just as urgent and important as the regulation of rates for conveyance itself. The fourth cause was the difficulty of obtaining redress against railway companies.[1]

On February 15, 1881 a Select Committee was appointed with Mr. Evelyn Ashley as Chairman, to inquire "into the charges of railway companies and canal companies, and the railway and canal companies for the conveyance of merchandise, minerals, agricultural produce, and parcels on railways and canals, into the laws and other conditions affecting such charges and into the working of the Railway Commission of 1873; and to report as to any amendment of the laws and practice affecting the said charges and the power of the said Commission that may be desirable." Its final report was made on July 27, 1882; the questions of exces-

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[1] The Report of the Select Committee of 1882 gave three reasons:

"1. Because the expense of obtaining redress is so great that the traders even when completely successful, will almost invariably sustain pecuniary loss;
"2. Because experience has shown that railway companies are prepared to litigate to any extent which few traders would dare to contemplate; and
"3. Because railway companies have so many opportunities of putting traders to inconvenience and loss by withholding ordinary trade facilities and otherwise, that traders are afraid of the indirect consequence of taking a railway into court."
Parliamentary papers, V. 13, 1882.
pp XII-XIII; See also Joint Select Committee Report, 1872, V.13, P. XII; Report of the Departmental Committee Appointed by the Board of Agriculture and Fisheries on Preferential Treatment, 1906, V. 55, P. 3, 27.

sive charges, unequal rates, increase of rates, classifications and powers of the Railway Commissioners were all carefully analysed. The whole report showed, that the only remaining solution of the problem of rate regulation was the revision of the schedule of maximum rates and the classification of goods. As this report was the basis of a Bill that was later passed and became the Railway and Canal Traffic Act, 1888, some of its important recommendations out of the total thirteen will be worth quoting.[1]

"1. That chambers of Commerce and of Agriculture as well as other similar associations of Traders or Agriculturalists, have a Locus standi before the Railway Commission on a certificate of the Board of Trade that they are a bona fide Association.

"2. That one uniform classification of goods be adopted over the whole railway system.

"3. Terminal charges to be recognized, but subject to publication by railway companies and in case of challenge to sanction by Railway Commission.

"6. That the Railway Commission be made permanent and a Court of Record.

"7. That the powers and jurisdiction of the Railway Commission be extended to cover;

(a). All questions arising under special acts or the public statutes for regulating railway or canal traffic affecting passengers or goods.

(b). The making of orders which may necessitate the cooperation of two or more railway or canal companies within the statu-

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[1] Report of the Select Committee, 1882, V. 13, P. XVI.

tory obligations of the companies.

(c) Power to order through rates on the application of traders, but no such order to impose on a railway company a rate lower than the lowest rate of such railway company for similar articles under similar circumstances.

(d) The revision of traffic agreements.

(e) The granting of damages and redress for illegal charges and undue preferences.

(f) The Commissioners to have power, on the joint application of parties, to act as referees in rating appeals.

"8. That the Railway Commissioners should deliver separate judgments when not unanimous.

"9. One appeal to be granted as of right from the judgment of the Commission and "prohibition" as well as "certiorari" to be forbidden.

"10. High Court of Justice to have powers to refer to the Railway Commission cases which involve questions under the Railway and Canal Traffic Acts."

Bills dealing with these recommendations, were introduced by successive Presidents of the Board of Trade, but they failed to receive the sanction of Parliament. In 1886 both Mr. Chamberlain and Colonel Nolan brought in separate Bills.[1] Both were finally withdrawn. That of Colonel Nolan aimed to secure equal charges for home producers.[2] On March 8, 1886,[3] Mr. Mundella intro-

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[1] In 1886 the agitation was so great that every railway's shareholders and employees were effected and railway property was depreciated on the Stock Exchange. Han. 325, 1888 P. 1841.

[2] See Bill 25, Parliamentary Papers 1886, v. V. Bill to secure equal rights of railway freight to the agriculturists, manufacturers, and others of Great Britain.

[3] Han. V. 303, 1886, P. 553.

duced into the House of Commons a Railway and Canal Traffic Bill, nearest to the one passed into the Traffic Act of 1888, which receiving on the whole a more favorable receiption, yet failed to pass for want of time after its second reading.[1] Practically the same Bill[2] was twice introduced in the House of Lords, for second reading by Lord Stanley of Preston, first on March 14, 1887,[3] and again on March 1, 1888.[4] Sir Michael Hicks-Beach introduced the same Bill[5] in the House of Commons on May 10, 1888. It was this Bill which was passed on August 10, 1888 and became the Railway and Canal Traffic Act, 1888.

The passage of the Bill was strongly urged,[6] as it had been agitated for a considerable number of years and it was the eighth Bill on the subject which in one form or another had been brought into Parliament. Lord Stanley, in connection with his Bill, pointed out that no advantage was to be gained by the prolongation of the controversy, but that there were good reasons for desiring its close as soon as possible.[7] The Bill, as proposed by Lord Stanley and later by Sir Michael Hicks-beach, differed from the previous Bills in that questions of safety, etc. in connection with passenger traffic were all excluded. Its provisions were confined to questions of goods traffic such as rates, terminal charges, classifications and other similar matters.[8] The Bill consisted of 46 clauses with a schedule of railway acts repealed. It was divided

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[1] Han. V. 312, 1887, P. 128.
[2] Fortnightly Review, 1886, V. 45 pp. 449-471; Edinburgh Review, 1887 V. 165, pp. 333-353.
[3] Han. v. 312, 1187, P. 125
[4] Han. v. 322, 1888, P. 1793.
[5] Han. v. 325, 1888, P. 1831
[6] Han. v. 312, 1887, P. 125-167
[7] Han. v. 322, 1888, P. 1795
[8] Herapath's Ry. Journal, V. 49, 1887, P. 290.

into four parts; the first related to the constitution, procedure and the jurisdiction of the Commission; the second, to provisions concerning traffic charges; the third, to canals, and the fourth, to miscellaneous matters of minor importance. As the last two, fell without the scope of our inquiry, a brief account of the first two alone will be given.

The first part of the Bill proposed to abolish the existing Railway Commission and to establish a new one under the title of the Railway and Canal Commission to sit in England, or if the nature of a case required, in Scotland or Ireland. The new Commission was to consist of three permanent Commissioners and three ex-officio Commissioners. Of the former, thehead must be a lawyer of experience appointed on the recommendation of the Lord Chancellor and the other two who were termed "lay members" were to be appointed on the recommendation of the Board of Trade, the only condition laid down being that one of them should possess railway experience. The three ex-officio Commissioners were to be the three judges of the Superior Courts for the country, (England, Scotland and Ireland) respectively in which the case was being heard. The second part of the Bill related particularly to traffic charges. Within twelve months from the passing of the Act, every railway company was required to submit to the Board of Trade a revised classification of goods and a schedule of maximum rates and charges. After the classifications and schedules were made, the Board of Trade would arrange to remove objections. The results thus arrived at would be embodied in a Provisional Order Act. In case of failure to agree with the railway companies, the Board of Trade was empowered

to prepare a fair classification and schedule and to submit the same to Parliament. Larger power was given to the Railway and Canal Commission to decide unequal rates. In deciding the same, the Commission was required to take into consideration whether the difference in treatment was necessary to secure the Traffic. The latter point formed the gist of the dispute during the discussion in Parliament. The Bill provided also a system of voluntary arbitration for settling disputes under the auspices of the Board of Trade. In general the object of the Bill was to secure publicity and fairness in the conduct of traffic, to let the public know what the charges were and to afford better means for the remedying of unfair charges. The Bill was said to represent a fair compromise between opposing interests and to afford means of reestablishing trade on a sound basis.[1]

While the Bill was in Parliament, much valuable discussion took place on both sides.[2] No former railway Bill had ever been so carefully considered or so hotly debated.[3] Much new light was thrown on the principles of railway charges. The discussion, though based on the text of the Bill, can be grouped under three heads; first, the Railway and Canal Commission; second, terminal charges, and third, unequal rates. Of these, by far the most important, from the theoretical point of view, was the last. All we can do here is to review very briefly the chief points under each head and to point out the important changes made in the Bill.

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1. Han. V. 322, P. 1794; Herapath's Railway Journal, V. 50, 1888, March 3, P. 258.
2. See Handard, 1886, V. 303,305; 1887; V. 312, 313,314, 321; 1888, V. 322, 323, 325, 326, 329,Under the Railway and Ca. Traffic Bill.
3. See also the resolutions of the Council of the Railway and Canal Traders' Association: Herapath's Railway Journal, 1887, V. 49, P 433.

Under the first head, the Earl of Jersey proposed an amendment to make the Railway and Canal Commission consist of two permanent Commissioners instead of three, with a Judge of the Supreme Court permanently attached.[1] Under this system there would be no ex-officio Commissioners. The object of the proposal was to strengthen the Court and to inspire confidence, but it was defeated by 42 against 15. The Marquis of Salisbury raised the important question whether the Court ought to be dominated by a legal official or by expert laymen or in other words, whether the intention was purely to establish a tribunal to determine questions of law or whether something beyond this was intended.[2] It was urged as a wise policy to provide that the expert element should predominate in the Court. Under the Regulation of Railway Act, 1873, the Railway Commissioners might declare practices illegal but they had no power to award damages for past illegal practices. It was contended that the new Railway and Canal Commission should possess power to award damages back for a certain number of years.[3] Objections were raised against allowing appeal only on questions of law but not on questions of fact.[4] The purpose of granting one appeal was, it was pointed out, to reduce expenses of litigation.

Under the second head - terminal charges - the Bill proposed to recognize the right of the railway to impose terminal charges, subject to the discretion of the Railway and Canal Comcission as to whether in each case they were legal or not. The contention of the public was that these terminal charges were not

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[1] Han. V. 312, 1887, P. 1745.
[2] Han. V. 312, 1887, P. 1851.
[3] Han. V. 312, 1887, P. 1756.
[4] Han. V. 312, 1887, P. 1758.

justifiable and hence should not be recognized. Lord Henniker moved an amendment to Clause 24; "And in every case those maximum rates and charges shall be deemed to include all terminal charges of every description other than charges for loading, unloading, collection and delivery of traffic where such services are performed by the company, and every company shall state in such classification and schedule, the nature and amount of the charge proposed to be authorized for loading, unloading, collection and delivery of each class of traffic when such services are performed by the company."[1] What the shippers wanted was that, as embodied in the first part of the above amendment, terminal charges of every description should be included in the maximum rates, taking no notice whatever of the vast amount of capital invested in erecting sidings, wharves and warehouses, etc. The railway companies contended that it would be unreasonable of the legislature to sweep away all terminal charges without giving regard to the different circumstances sanctioned by the different Special Acts. Moreover, it was impossible, in the case of short distance traffic, to make rates cover terminal charges. After a long discussion it was thought best to follow the principle laid down by the Queen's Bench in the Hall's case,[2] that in the determination of terminal charges regard was to be had only to expenditure that was reasonable and necessary to provide proper accomodation for the goods in respect of which the charge was made; goods were not to be made to pay for the expensive passenger stations, and the amendment was finally withdrawn.

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[1] Han. V. 323, 1032.
[2] Hall & Co. v.L.B.& S. C. Ry. Co.; 4 Ry. & ca. Tr. cases, 398.

Under the third head the controversy was on undue preference or more correctly on unequal rates. Unequal rates formed the rate problem most difficult of solution.[1] The controversy was embittered for two reasons. Firstly, a strong demand was made that equal mileage rates under all circumstances should be adopted. Secondly, it was insisted that protection should be given to home produce. What the Bill proposed to do was to prevent undue preference without depriving the public of the advantage of competition. With this object in view, it threw upon the railway companies the burden of proof that a lower charge or a difference in treatment did not amount to an undue preference. At the same time the Railway and Canal Commission was empowered to take into consideration, in addition to other factors, whether such lower charge or differences of treatment was necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it was made. The Bill still readjusted the principle of equal rates with equal services, but it permitted exceptions under differing circumstances. The controversy was over the clause that it should not provide for those exceptions. It would be inconsistant with the principle of the Bill, it was urged, as in one part of the Bill undue preference was absolutely prohibited while in another it was justified.[2] Not a few members went even further. Parliament, they claimed, had no right to interfere with private industries. Parliament would have broken its faith, if it intended to fix railway rates, as the right of making charges had been

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1. Economist V. 46, 1888, May 12, P. 591-593.
2. Han. V. 323, 1888, pp. 1037-1060; V. 325, 1888, pp. 1840-1934; Economist, V. 46, 1888, May 12, P. 591.

granted irrevocably to the railway companies and money had been invested on the understanding that they were to be allowed certain powers.[1]

The government maintained that any hard and fast rule for the regulation of railway rates would be productive of much harm but only some general regulation was absolutely necessary. Much of the trade of the country was created by, and could only be continued by special rates. Difference of treatment must obviously be justified by differences of circumstances. Persons dealing in large quantities shipped at regular intervals ought to be allowed certain advantages over those who did not deal in such large and regular shipments. It was, moreover, to the interest of the consumer that some difference in rates under special circumstances should be justifiable.[2] The words "in the interest of the public" were inserted in order to require that where a railway company carried at discriminatory rates, the inequality must be not merely in the interest of the railway company itself, but also in that of the general public. To do away with all special rates would be to place the large towns in the same position as they would be if there were no competition between railways. It would prevent many agricultural countries from sending the produce which found its way to the metropolis and many large towns.[3] The consumer should get the article required at as low a rate as possible.

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1. See also, Herapath's Railway Journal, 1887, V. 49, P. 290.
2. See the special article in the Economist, V. 45, March 19, 1887, P. 360.
3. Report on preferential Treatment, 1906, V. 55, P. 16; Economist, 1887, V. 45, P. 360.

What was discussed in Parliament under the head of unequal rates was really a preference of a double kind.[1] There were the preferential rates among home industries, involving questions of preference such as those occurring between one port, or one class of traffic and another. Then there were the preferential rates, as between home and foreign industry.[2] The latter question of preference as between home and foreign produce naturally involved such controversal topics of free trade and protection. The complaint of preferential treatment at this period was mainly related to the rates charged on foreign produce as compared with home produce.[3] Sometimes, it was charged, greater accommodation was provided, lower rates charged and more services rendered for foreign traffic. The preference in many cases amounted to a distinct bounty given to the owner of the foreign goods. If bounties were to be given at all, it would be more reasonable to give them in favor of home produce. The Bill was severely attacked on the ground that it legalised the exactions of preferential rates to the detriment of the native industries and in favor of foreigners.[4] The existing state of things amounted to a system of bounty, which placed foreign goods in the English market under the most favored conditions and kept the English goods out. At the bottom of the contention was the question of protection and free trade. One side contended that, under no circumstances whatever, should it be allowed that foreign goods should be carried more cheaply than

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1. Han. V. 329, P. 445; Report on Preferential Treatment, 1906, V.55, pp. 10-11.
2. There is copious material on this topic; besides the Parliamentary debates, there is the Report of the Select Committee of 1882, and the Report on preferential treatment, 1906.
3. Report, Select Committee, 1882, V. 13, P. IX.
4. Han. V. 322, P. 1798.

English goods.[1] The other side argued that the public would be benefited by the foreign goods coming into the markets; if competition was eliminated, price would rise. The regulation of railway rates was made much simpler by eliminating entirely the question of protection and free trade. Origin of traffic could neither justify nor condemn a preferential treatment. It must be justified on grounds irrespective of home or foreign produce.

The Bill in spite of many prophecies as to its probable fate,[2] received the Royal Assent on August 10, 1888 and became the Railway and Canal Traffic Act, 1888.[3] The Act repealed portions of the Railway Regulation Acts [4] but it did not codify the remaining sections which were consequently still in effect. The railway and Canal Traffic Act, 1888, was divided as was the original Bill, into four parts, only the first two of which concerns us here.

The first thing that the Act accomplished was the reconstruction of the old Commission. The new Railway and Canal Commission, as established under the Railway and Canal Traffic Act, 1888, consisted of two appointed and three ex-officio Commissioners.[5] They were appointed [6] on the recommendation of the President of the Board of Trade and one of them must be of experience in the railway business.[7] As provided in the Act of 1873, Com-

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[1] Han. V. 322, 1888, P. 1804.
[2] Editorials on the Bill, Ry. Times and Herapath's Ry. Journal, 1886-1888.
[3] 51 and 52, Vict. C. 25.
[4] See the table attached to the Act.
Railway Clauses Act, 1854; Railway and Ca. Traffic Act, 1854; Regulation of Rys. Act, 1868; Regulation of Rys. Act 1873,
[5] Act. 1888, S. 2.
[6] Letter of Appointment--Letter addressed by the Board of Trade to the two Railway Commissioners appointed under the provisions of the Railway and Canal Traffic Act, 1888, British Parliamentary papers, 1888 Vol. LXXXVIII (C 5594), P. 1.
[7] Act. 1888, S. 3. Sub. 1,2.

missioners must not own any interest in railway stocks. Any one of the two appointed commissioners could be removed as before only for inability or misbehaviour by the Lord Chancellor.[1] The three ex-officio Commissioners in each case were to be the judge of a superior Court. The Lord Chancellors in England and in Ireland and the Lord President of the Court of Session in Scotland,[2] would make from time to time the assignments respectively for the three countries, such assignments would be made for a period of not less than five years. At the hearing of any case, there must be three Commissioners and the ex-officio Commissioner was to preside. The opinion of the ex-officio Commissioner, in a question of law should prevail.[3] The central office of the Commission was to be in London, but a sitting might be held in any part of the country as the convenience of the proceedings would demand.[4]

The power of making complaints was extended to include more persons and organizations than those mentioned in the Act of 1873.[5] Any individual trader who was directly prejudiced had a right to complain.[6] Any organization could make complaint even without

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[1] Act, 1888, S. 3, Sub.3,4,5
[2] Act, 1888, S. 4.
[3] Act, 1888, S. 5, Sub. 3.
[4] Act. 1888, Section 5, subsection 1, 2.
[5] Act, 1888, Section 7.

    I. Local Authorities.
        a. Harbor Board.
        b. Conservancy authority
        c. Common Council of the City of London.
        d. Council of a city or borough
        e. Representative County body.
        f. Justices in quarter sessions
        g. Commissioners of supply
        h. Metropolitan Board of Works.
        i. Urban Sanitary Authority.
        j. Rural sanitary authority.
    II. Ass'n. or traders of freighters. Chamber of Commerce or (Agriculture.

[6] 14, London v. South, 172.

representing any individual trader and without proof that any individual trader was aggrieved.[1] The powers which were conferred on the former Commission were now transferred to the new Commission.[2] The new Commission was further empowered to hear and decide cases of traffic facilities and undue preference both under special Acts granted to individual railway companies and under the Traffic Acts regulating all railway com-panies.[3] Any question or dispute involving the legality of charges could be heard and determined by the Commission. Railway companies could not refuse to afford reasonable facilities in the interest of the public and no agreement between railway companies could stand in the way of the Commission enforcing the law.[4] The Commission was given power to award damages, including repayment of overcharges.[5] Arbitration as to the differences between railway companies by the Commission was continued in force under the present Act.[6]

An appeal [7] could be made to a superior Court on points of law. Its decision would be final but in the case of any difference in opinion between any two of such superior courts of appeal, the difference might be appealed to the House of Lords. No appeal should be made on questions of fact or upon any question regarding the Locus standi of a complainant. The general powers of the Commission to enforce orders, to make rules and to appoint officers

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[1] Forwood Brothers v. G.N.Ry. Co. 1914; 12 Ry. & Canal Traffic (Cases, 89, 93.
[2] Act, 1888, Section 8.
[3] Ibid, 9.
[4] Ibid 11.
[5] Ibid 12.
[6] Ibid 15.
[7] Ibid 17.

were practically the same as under the Act of 1873.

Any objection as to a through rate or route was to be referred to the Commissioners for their decision. In deciding, the Commission must consider whether the rate or route was reasonable and in the interest of the public.[1] Apportionment of a through rate, if not agreed between the railway companies, could be determined by the Commission.[2] The decision of the Commission as before was made retrospective. In apportioning the through rate the Commission should take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route. A railway company must not be compelled to accept a lower mileage rate than the mileage rate which the railway company was charging on another part of the system for like traffic and similar services, but could be compelled to accept a less amount out of the through rate than the maximum rate which the company was entitled to charge.[3]

In deciding whether a lower charge or difference in treatment amounted to an undue preference, the Commission must take into consideration , in addition to other factors, whether the lower charge or the difference in treatment was necessary for the purpose of securing in the interest of the public the traffic in respect of which it was made.[4] The Commission possessed power to direct that no higher charges should be made on any merchandise carried over a less distance than those in effect for similar services over a greater distance on the same line of railway.[5] Group rates in

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1. Act, 1888, Section 25, sub. 5.
2. Ibid, , 6.
3. Ibid, , 9 and Section 26.
4. Section 27, Subsection 2.
5. Section 27, Subsection 3.

order to be valid must not create any undue preference.

So far as the nature of the Commission was concerned, the most important changes were the Court status granted to it and limitation of the right of appeal. Under the Regulation of Railways Act, 1873, the Railway Commissioners were regarded as being in the same position as any inferior Court and might be prohibited from proceeding in matters over which it had no jurisdiction.[1] Now by giving the Commission a permanent Court organization and by making its decisions definitely final on questions of fact, much strength had been added. The jurisdiction given by the Act of 1888, to the Railway and Canal Commission was much wider than that given by the Act of 1873 to the former Commissioners. The most important function from the standpoint of the public were (1) legality of rates, (2) undue preference, (3) facilities for traffic, (4) through rates, (5) terminal charges. The fact was emphasised however, that the Commission was simply a Court and therefore not concerned with rate making. An amendment to place the revision of classification of goods and schedules of charges in the hands of the Commission was defeated. The control of rates was divided. Powers in regard to conciliation of rate difficulties were given to the Board of Trade by the Conciliation Clause. The Commission had to deal only with the question as to whether a rate was legal or not.

Under the head of traffic, the Act contained twelve sections. Four important things were specified; (1) the revision of the classification of goods and schedule of charges; (2) the enlarge-

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1. Toomer, V. L.C.D. Railway Co. and S. E. Railway Co.; 2 Ry & Canal Traffic Cases, P. 98.

ment of the existing law on unequal rates; (3) the enactment of the conciliation Clause; (4) and the requirement as to the procedure of increase in rates. The revision of classification and schedules provided for in Section 24 and 35 will be discussed in a separate chapter. Sections 25 to 30 enlarged the scope of the law relating to reasonable facilities, through rates, undue preference, and powers of different parties to make complaints. Section 31 embodied the famous Conciliation Clause. Section 32 dealt with the requirement of making annual returns and statistics, section 33 to 34 with the publication of rates. Section 2 of the Railway and Canal Traffic Act, 1854 was amended by Section 25. Reasonable facilities were made to include all the facilities at through rates for receiving, forwarding, and delivering of traffic. The privilege of applying for through rates was extended to both corporations and individual persons. Objections to through rates or to the apportionment of through rates can be referred to the Commission for decision. Higher charge on merchandise carried over a less distance than over a greater distance on the same line of railway and in respect of the like description and quantity was prohibited.[1]

This has sometimes been misnamed the English "Long and Short Haul Clause." As a matter of fact, the intention of the Legislature was simply to make it a subdivision of the same law on undue preference. The Courts have never treated this clause separately and apart from undue preference.

All rate books containing classification of merchandise traffic and schedules of charges should be kept open for inspection and copies

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1. Section 27, Subsection 3.

of classifications and schedules should be kept for sale. On application the railway companies must distinguish rates from conveyance charges and terminal charges; the later must be further divided according to the nature and detail of such charges. When railway companies intended to make any increase in the toll, rates or charges, the increase must be published in a prescribed manner and there must be fourteen days' notice before it could take effect.[1]

Complaint as to unreasonable rates of charge, or any other complaint might be made to the Board of Trade under the Conciliation Clause.[2] If there were reasonable ground for the complaint, the Board might call upon the railway company for an explanation and endeavor to settle the differences amicably. The Board of Trade was also required to report to Parliament from time to time the complaints made to them under the provisions of the section. The Clause provided for such cases where the individual traders or corporation of traders would not care to go into Court against a powerful railway company. Many shippers felt unlike to complaint against a railway company, for in the first place it was very difficult to obtain redress, in the second place, railway companies would be ready to litigate to an extent which few shippers would dare to contemplate, and in the third place, railway companies would have many opportunities of putting a shipper to inconvenience by with holding facilities, and such like methods. The Conciliation Clause provided for those cases where the individual shippers or corporation of shippers would not care to go into Court against a powerful railway company. The Clause was, therefore,

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1. Section 33.
2. Section 31; Economist 1888, V. 46, P. 392, 541.

very useful and it had worked very successfully.[1]

The following table condensed from the reports from 1889 to 1911,[2] made by the Board of Trade under the Conciliation Clause shows the nature, and the number of complaints.

NATURE AND NUMBER OF COMPLAINTS.

	1889-1898	1899-1905	1906-1907	1908-1909	1910-1911	Total
	6 Reports	3 Reports	10th Report	11th Report	12th Report	
1. Rates unreasonable or excessive in themselves.	335	186	38	39	29	627
2. Undue preference	175	118	59	65	87	507
3. Rates unreasonably increased.	-	134	22	22	17	195
4. Classification	-	-	-	30	47	77
5.a. Delay in transit	173	213	23	27	27	738
b. Liability			16	17	9	
c. Rebates			17	23	23	
d. Through rates			20	15	9	
e. Miscellaneous			48	42	36	
Total	683	651	243	280	284	2,141

The nature of complaints was classified differently in the earlier reports. In the first report[3] it was classified into (1) rates unreasonable or excessive in themselves, (2) higher rates for shorter distance on the same lines, (3) disproportionate rates on higher rates for shorter distance not on the same line and (4) unclassified. The second and the third were later combined under Undue Preference and the unclassified were further classified as above. The table shows that the number of complaints which were handled by the Board of Trade through the Conciliation Clause was increasing. Between 1889 to 1898 there were less than 100 complaints per year made to the Board of Trade but in 1910-1911 there

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[1] 3rd Report by the Board of Trade of Proceedings under sec. 31 of the Ry. & Canal Traffic Act, 1888. Parliamentary Papers, 1893, v. 78 (C 7083), P. 3; Report on Preferential Treatment, 1906, v. 55, p. 25.

[2] The last report available.

[3] 1st report 1891.

were 284 complaints. As to each class of complaints there was a decidedly increase of complaints under undue preference, classification, delay in transit, and rabates. The number of complaints as shown in the other classes was decreasing.

The following table shows the result from 1889 to 1911, of the proceedings of the Board of Trade upon complaints made under section 31 of the Railway & Canal Traffic Act, 1888, including complaints of increased rates made under section 1 of the Railway & Canal Traffic Act, 1894:[1]

RESULTS OF THE COMPLAINTS.

	1889-1898	1899-1905	1906-1907	1908-1909	1910-1911	
	Six Repts.	Three Repts.	10th Report	11th Report	12th Report	Total
1. Casses satisfactorily settled.	218	221	87	94	88	708
2. Cases not followed up by the complainants.	234	184	58	62	97	635
3. Cases in which the complainants not satisfied.	231	246	98	124	98	797
4. Cases under consideration when report made.	-	-	-	-	1	1
Total	683	651	243	280	284	2,141.

From the above table it can be seen that cases satisfactorily settled and cases not followed up by the complainants were increasing. Of the total number of complaints more than 30% were satisfactorily settled and in only 26% of the total number of complaints, the complainants were not satisfied. About 30% of the total number of complaints were not followed up by complainants.

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[1] Annual Reports 1889-1911 by the Board of Trade of Proceedings under section 31, of the Railway and Canal Traffic Act, 1888, and under sectional of the Railway and Canal Traffic Act, 1894.

CHAPTER IX.

Decisions of the Railway and Canal Commission Bearing upon Undue Preference.

1889 - 1914.

The decisions of the Railway and Canal Commissioners bearing upon the laws of rate regulation will be discussed under two heads: undue preference and increase of rates. The latter is chiefly concerned, as we shall see, with the interpretation of the Railway and Canal Traffic Act, 1894, and will, therefore, be better discussed with the Act.[1] The present chapter will deal only with the decisions bearing upon undue preference[2] from 1889 to 1914. During this period the decisions of the Railway and Canal Commission have been upheld by the Court of Appeal, except that in the North Staffordshire Colliery Owners' Association case which deals with the increase of rates.[3]

Since the passage of the Railway and Canal Traffic Act, 1888, the question whether an inequality in railway charges would amount to an undue preference would not rest solely, as it did before on section 21, Railway and Canal Traffic Act, 1854, but upon section 27 Railway and Canal Traffic Act, 1888, as well.[4] Before 1888 the Railway Commissioners were obliged to give a very narrow

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[1] See Chapter XI.
[2] The history of "undue preference" under the Railway and Canal Traffic Acts, 1854-1894 was given in the form of a memorandum by Sir Francis Hopwood of the Board of Trade for the information of Lord Jersey's Committee. See Report on Preferential Treatment, by the Departmental Committee, 1906, V. 55, P. 322.
[3] See Appendix IX.
[4] Liverpool Corn Traders' Association v. London & North Western Railway Company, 1890; 7 Railway & Canal Traffic Cases, 125, 140.

construction to undue preference., The law discouraged nearly every consideration except that justifying differences of charge by differences in the way in which the traffic of one trader as compared with that of another had to be conducted. In a word, it was the differences in costs of working or differences, such as greater quantity, affecting profit received from the traffic, which formed the chief determining factor.[1] Under the Railway and Canal Traffic Act, 1888, section 27,[2] the Commissioners were given much greater freedom. They could base their decisions not merely on the grounds previously taken, but also on public interest and on "any other considerations affecting the case."[3] The insertion of the words "in addition to any other consideration affecting the

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[1] Fairweather & Co., and others v. Corporation of York, 1900; 11 Ry. & Canal Traffic Cases, 201, 211.

[2] Section 27, sub-section 2 of the Railway and Canal Traffic Act, 1888:-"In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the Court having jurisdiction in the matter, or the Commissioners, as the case may be, may, so far as they think reasonable, in addition to any other consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant; provided that no railway company shall make, nor shall the Court or the Commissioners, sanction any difference in the tolls, rates, or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services."

[3] Fairweather & Co., and others v. Corporation of York, 1900; 11 Ry. & Canal Traffic Cases, 201, 211.

case" in section 27 and the words "in any respect" in section 55[1] indicate very clearly the intention of Parliament to extend and enlarge the grounds on which the Commission could decide whether a lower charge amounted or not to an undue preference.[2] The law would be applicable to cases where the railway companies charged unequal rates for the same service as well as where they made a difference in treatment.[3]

The nature of the law on undue preference was not, however, changed. It was still based on section 2, of the Railway and Canal Traffic Act, 1854. A mere preference would not give ground for complaint.[4] It must be, as before, proved undue or unreasonable.[5] The law still demanded from railway companies that if they enjoyed the advantage of serving two places, however far apart, they must not sacrifice the one set of local interests to the other by undue inequality in the rates, railway companies must be neutral to all shippers who were competing with one another. If they were not neutral and the rates were unequal, they must justify their de-

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[1] Section 55 "Undue Preference," of the Railway and Canal Traffic Act, 1888:- The term "undue preference" includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in any respect, in favor of or against any person or particular class of persons or any particular description of traffic.

[2] Liverpool Corn Traders' Association, etc., 140.
Pickering Phipps and others v. L. & N. Ry. Co., and others, 1892; 8 Ry. & Canal Traffic Cases, 83, 111.

[3] Lever Brothers v. Midland Ry. Co., 1909; 13 Ry. & Canal Traffic Cases, 301, 330.

[4] Abram Coal Co. v. Great Central Ry. Co., 1903, 1905; 12 Ry. & Canal Traffic Cases, 125, 133.

[5] Ibid.

parture upon grounds legally valid.[1] The burden of proving that a difference in charge would not amount to an undue preference was now made to lie not on the complainant but on the railway company.[2] The Commission as before had no general power to reduce rates; it could make an order only when rates were so high in relation to other rates as to amount to an undue preference.[3] Undue preference was still confined to the treatment of traffic on or to come on the railway.

Neither the Railway and Canal Traffic Act of 1854, nor that of 1888 afforded the Commission any distinct guide as to what would be undue or unreasonable. It was left entirely to the judgment of the Commission on a review of the circumstances.[4] In proving a preference undue, a railway company might rely on any circumstance calculated to affect men's mind.[5] The law did not make every inequality of charge undue preference, and it rather implied that there were preferences which might be justified by certain circumstances. In deciding whether a preference would be undue or unreasonable, it was not alone the interests of the customer which were to be considered, a fair regard must also be paid to the interest of the railway companies.[6] But whether in particular instances there had been an undue or unreasonable preju-

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1. Liverpool Corn Traders' Association, etc., 131.
2. Pickering, Phipps, etc., 97.
3. Castle Steam Trawlers v. G. W. Ry. Co., 1907, 1908; 13 Ry. & Canal Traffic Cases, 145.
4. Pickering Phipps, etc., 89, 100.
5. Abram Coal Co., etc., 125, 133.
6. Ibid. 134.

dice would be a question of fact which must be decided on its own merits.[1]

It was further held as in Pickering Phipps case, that what was "undue" was a question of degree.[2] The sentence of undue preference would depend upon a variety of circumstances. It would be impossible for any one to say that a difference of circumstances represented or was equivalent to such a fraction of a penny difference of charge in one case as compared with another. A much broader view must be taken and it would be hopeless to attempt to decide a case of undue preference by any attempted calculation, arithmetical or mathematical. The power of the Commission could not be questioned on the ground that too much or too little weight had been given to some one factor such as competition in determining a case of undue preference, for it was a question of fact and of degree, not of law.

The law of 1888 specially specified that in addition to any other consideration affecting the case, the Commission might take into consideration two things - first, whether the lower charge or difference in treatment complained of was necessary for the purpose of securing, in the interest of the public, the traffic in respect of which it was made, and, second, whether the in-

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[1] Dublin and Manchester Steamship Co. v. L. & N. W. Ry. Co., 1912; 15 Ry. & Canal Traffic Cases, 88, 89; see also *Palmer v. L. & N.* W. Ry. Co., 1868; 1 Ry. & Canal Traffic Cases, 162; *Denaby Main Colliery Co.* etc., 426; Pickering Phipps, etc., 95.
[2] Pickering Phipps, etc., 87-89, 96, 100.

equality could not be removed without unduly reducing the rate charged.[1] Undue preference then must be examined first, as to whether it would be a commercial necessity to the railway company; it thus would eliminate any improper purpose or preference for the sake of a preference; secondly, as to whether the interests of the public were served by the fact that the railway company secured the traffic; thirdly, as to whether the inequality could not be removed without unduly reducing the rates charged, When a difference in charge was established not for the purpose of giving a preference but of securing the traffic, the difference might still be considered as undue preference, for a preference given for the purpose of securing traffic could par se be a justification. It must be established that for different reasons the lower rate ought not to be lowered and that the public interest justified the inequality of rates.[2]

What would justify undue preference might be considered, as in the previous chapter, under three heads; first, cost of working; second, competition, and third, interest of the public. Cost of working, was not in this period the predominating factor in deciding a preference undue or unreasonable. Increased cost of working might arise in various ways. In the first place, it might be due to operating causes. It could not be considered as an infringe-

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[1] Liverpool Corn Traders' Association v. L. & N. W. Ry. Co., 1890; 7 Ry. & Canal Traffic Cases, 125, 132-136; Liverpool Corn Traders' Association v. Great Western Ry. Co., 1892; 8 Ry. & Canal Traffic Cases, 114, 128-136.
[2] Pickering, Phipps, etc., 83, 103.
[3] Mansion House Association on Ry. & Canal Traffic for the United Kingdom v. London & South Western Ry. Co., 1895; 9 Ry. & Canal Traffic Cases, 20, 35; Tower Commissioners of Newry v. Great Northern Ry. Co. (Ireland), 1889, 1891; 7 Ry. & Canal Traffic Cases, 184.

ment of the law that a railway company should charge a higher rate per ton per mile for any portion of its line which was more expensive to work than other portions. In the second place, it might be due to the length of haul;[1] longer distance would usually justify a lower charge, mileage compared.This established principle "long, lead low rates" was definitely recognized in the Companies Charges Confirmation Order Acts[2] of 1891-92 which established differences in rates per mile with regard to distances and quantity. In the third place, a preference might be justified by the guarantee of the regular shipment of a certain quantity.[3] Messrs. Hickleton Main Colliery Co., and Messrs. Denaby and Cadeby Colliery Co. were competitors. The railway company charged the Denaby Co. on the following terms:

(a) For any quantity up to 200,000 tons a year, 2s, 5d per ton.

(b) From 200,000 to 300,000 tons a year, 2s, 4d per ton.

(c) For any quantity above 300,000 tons a year, 2s, 3d per ton.

These rates were charged under a guarantee to send a minimum quantity of 200,000 tons of shipment coal per annum which in practice, came up to about 500,000 tons per annum during 21 years from 1891. The same rates were granted to Messrs. Hickling Main Colliery Company, but it was proved that the applicants sent only some 60,000 tons of coal a year. Upon complaint in 1903 the Commission held that the difference of 2d a ton up to 200,000 and the still greater difference for larger tonnage was justi-

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[1] Mansion House Association, etc., v. L. & S. W. Ry. Co., 1895; 9 Ry. & Canal Traffic Cases, 20, 35; Town Commissioners of Newry, etc., 184.

[2] See the following chapter.

fied.[1]

The railway company could make a difference in charge for a guaranteed quantity, if such difference was allowed by the railway company in good faith for the protection of its own interests and in the belief that the guarantee was worth to it the difference in charge. A difference in the mode of packing might justify a preference if it could be shown that a greater quantity could be carried in the same wagon as a result of such packing.[2]

Competition might justify a preference. The decisions of the Commission on this principle were not as well defined as we would wish. A few points, however, were clear. Competition, to be recognized as a justification of a preference, must be direct and effective.

In the Lanceshire Patent Fuel Company case[3], the railway company was complained to carry shipment coal at a lower rate than they carried another kind of coal, which was in the form of slack. The shipment coal was manufactured into patent fuel for shipment. Upon application, the Commission decided that no competition existed between the coal carried for shipment and that carried for the trader. The fact that the trader manufactured the coal carried for him by the railway company into an article which might ultimately compete with the coal carried by the railway company for shipment was not bound to be taken into consideration by the railway company in regulating their charges. In the Eastwood & Co.

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[1] Hickleton Main Colliery Co. v. Hull, Barnsley and West Siding Junction Ry. & Dock Co., 1903; 12 Ry. & Canal Traffic Cases, 63.

[2] Guernsey Mutual Transport Co., and William Entwisle v. L. B. & S. C. Ry. Co., etc., 1908; 13 Ry. & Canal Traffic Cases, 153.

[3] Lancashire Patent Fuel Co. v. L. & N. W. Ry. Co., etc., 1904; 12 Ry. & Canal Traffic Cases, 77.

case, the Commission held that the mere fact that competitors of a trader had shorter routes by another railway would not justify the lowering of the rates to the same level as that by the shorter route.[1] A traffic which differed from other traffic only in being competitive could not have any distinction made in its favor.[2]

The real difficulty of the question was how much consideration should be given to effective competition in justifying undue preference. Railway companies had always maintained that the commercial necessity of competition ought to justify a rate otherwise indefensible. The traders on the other hand insist upon the contrary. The Railway and Canal Traffic Act, 1888 was not plain upon this particular point. Section 27, sub-section 2 showed all the appearance of a compromise.[3] It did not state how far effective competition would justify a lower charge and prevent a preference undue, nor did it limit circumstances from receiving consideration. In the Pickering Phipps case, the difference in the charges was justified by the Commission purely and solely on the ground that there was competition.

The Pickering Phipps case involved two questions: a rebate of 4d per ton on coal and iron traffic, and an undue preference to the owners of Butlins and Islip furnaces. We will discuss here only the second question. The sidings of the Butlins

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1. Eastwood & Co. v. L. & N. W. Ry. Co., 1907; 13 Ry. & Canal Traffic Cases, 137; compare Budd (P. O.) 393.
2. Liverpool Corn Association v. L. & N. W. Ry. Co.; 7 Ry. & Canal Traffic Vases, 140-143.
3. Ibid.
4. Pickering Phipps v. L. & N. W. Ry. Co., 1893; 8 Ry. & Canal Traffic Cases, 83, 100-143.

and Islip furnace had access both to the London and North Western Railway and the Midland Railway. The sidings of the Duston furnaces which belonged to Messrs. Pickering Phipps and others had access to the London and North Western Railway only, but their sidings were nearer to the iron markets - 60 miles, 71 miles and 82 miles respectively. "The London and North Western Railway Company who carried the Butlins pig-iron 11 miles further, and the Islip pig-iron 22 miles further than the Duston pig-iron, charged Butlins 95 d per ton per mile, and Islip 0. 84 per ton per mile, while they charged Duston 1.05 d per ton per mile, so that the total charge per ton of pig-iron from Duston to the western markets was 5 s, 2 d, while the total charge per ton from either Butlins or Islip, was 5s 8d."[1] The Commission held that the preference was not undue. The fact that a trader had access to a competing route for the carriage of his goods might be taken into consideration by the railway companies in deciding a question of undue preference. This advantage would be a circumstance which might be treated in deciding a case of undue preference as any other advantageous geographical situation. But a railway company was not bound to take into consideration in fixing their charges such facts as that the goods carried for one trader would, after being manufactured, ultimately compete with those of another.[2]

Absolutely equal mileage rates could not be insisted upon, for they would practically exclude one of two competing railways

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1. Pickering Phipps, etc., 84-85.
2. Lancashire Patent Fuel Co., etc., 77.

from the traffic. There was traffic which would not come into the market; unless very low rates were charged; railway companies were sometimes justified for charging lower rates on traffic from a distance of such a character that it competed with the traffic nearer the market. The object of the company was simply to get such traffic but the public had an interest also in getting the traffic.[1] It was definitely agreed that where actual effective sea competition existed, a difference in charges was justified.[2]

In 1892 the Liverpool Corn Traders' Association[3] complained of an undue preference given by the Great Western Railway Company in respect of the rates charged for grain and flour from the Severn ports and Birkenhead respectively to Birmingham and Wolverhampton. The distances and rates were:

Birkenhead to Birmingham			98 miles,	rate 11s 3d
Cardiff	Severn Ports	to Birmingham	113 miles,	rate 9s 6d
Bristol		to Birmingham	141 miles,	rate 8s 6d
Avonmouth		to Birmingham	150 miles,	rate 8s 6d
Portishead		to Birmingham	153 miles,	rate 8s 6d
Sharpness		to Birmingham	86 miles,	rate 7s10d

The railway company gave the reason to be that they were competing for the carriage of grain and flour between the Severn ports and Birmingham and Wolverhampton, with carriers by water between the same places, and the railway rates were controlled by

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1. Corporation of Birmingham v. Midland Ry. Co., etc., 1909; 14 Ry. & Canal Traffic Cases, 24, 25.
2. Muntz v. L. & N. W. Ry. Co., 1910; 14 Ry. & Canal Traffic Cases, 284, 292.
3. Liverpool Corn Traders' Association v. G. W. Ry. Co., 1892; 8 Ry. & Canal Traffic Cases, 114.

the rates charged by such carriers. The decision of the Commissioners were divided. Two Commissioners held that the preference was justified, for there was effective competition both by rail and by water and no locality was prejudiced. Sir Frederick Peel pointed out, however, that there was still the question whether or not the Birkenhead rate might not be reduced.

An undue preference could neither be justified by cost of working nor by competition, if it was in direct violation of public interest. The law required that in considering a question of undue preference, the Commission must not only consider the legitimate desire of the railway company to secure traffic, but also whether it was in the interest of the public that the company should secure the traffic rather than abandon it or not attempt to secure it.[1] It was only in such cases where, though the object of the railway company is to secure certain traffic for its own purposes upon its own lines, the very fact that they sought to obtain it by certain rates, operated in the interest of the public that the Commission would not interfere. The law contemplated the possible existence of such traffic that might not be in the interest of the public. An undue preference might be justified on the ground of public interest if there was no evidence that the rates complained of were unreasonable or excessive.[2] But if a lower rate was given on the ground of public interest, the railway company, in justifying the lower rate, must point out what particular public interest was involved. Otherwise, the lower rate would

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[1] Pickering Phipps, etc., 102.
[2] Castle Steam Trawlers, etc., 145; Spillers and Bakers, Ltd. v. Taff Vale Ry. Co., 1903; 12 Ry. & Canal Traffic Cases, 70.

be an undue preference.

In 1890 the London and North Western Railway Company defended their unequal rates in a case on the basis of public interest.[1] They charged 8s 4d for the distance - 173 miles - between Cardiff and Birmingham and 11s 3d for the distance of only 98½ miles from Liverpool to Birmingham. The Commissioners held that the rates were an undue preference, for the interests of the public did not require the maintenance of the low rates from Cardiff to Birmingham. The railway company failed to point out any important public interests would be affected, if the traffic from Cardiff to Birmingham should go by some other route.

What is in the "interest of the public" and to what the word "public" refers were practical difficulties to the Commissioners. Justice Wills found it hard to say what precise public interests were intended to be respected.[2] Naturally, "public" referred to nothing wider than the British public; but to the majority of the British public, it might be a matter of profound indifference through what route goods might come. In the Liverpool Corn Traders' case it was held that the word "public" referred to in section 27 was the public of the locality or district affected. A considerable proportion of the population in general as opposed to any individual or association of individuals would satisfy the description.[3] Later in 1907, the term "public" was considered as including any considerable portion of the population not being

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[1] Liverpool Corn Traders' Association, etc., 125.
Richton Local Board v. L. & Y. Ry. Co., 1893; 8 Ry. & Canal Traffic Cases, 74, 80.

[2] Liverpool Corn Traders' Association, etc., 125, 137.

[3] Liverpool Corn Traders' Association v. Great Western Ry. Co., 1895; 8 Ry. & Canal Traffic Cases, 114, 127.

the parties concerned or their servants, including, therefore, the inhabitants of any district dependent for its prosperity on any given industry or trade.[1]

The Great Western Railway Company charged the following unequal rates for the conveyance of fish traffic from and to the respective places:-

Swansea	to	London,	distance	miles	198¾-	rate	per	ton	per	mile	3 d
"	"	Birmingham	"	"	161½-	"	"	"	"	"	2.97d
"	"	Bristol	"	"	91½-	"	"	"	"	"	3.93d
"	"	Exeter	"	"	167¼	"	"	"	"	"	3.41d
Milford	to	London,	"	"	267	"	"	"	"	"	2.26d
"	"	Birmingham	"	"	230	"	"	"	"	"	2.21d
"	"	Bristol	"	"	160	"	"	"	"	"	2.62d
"	"	Exeter	"	"	236	"	"	"	"	"	2.41d

The railway company stated and proved satisfactorily that the rates complained of were necessary for the securing of the traffic in the interest of the public, and that there was keen competition at Milford. The Commission held that the Milford rates "were justified, inasmuch as it was in the public interest that as many avenues of approach as possible should be kept open to London and other fish markets, and also inasmuch as it was in the interest of a considerable community at and around Milford that its fishing industry should be enabled to continue to thrive."

What is in the interest of the public may be summarized now. In the first place, public interest must be in the form of a bet-

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[1] Castle Steam Trawlers, etc., 145, 150.

ter service.[1] In the second place it would be clearly in the public interest that as many avenues of approach to diverse markets as possible should be kept open.[2] In the third place, it might also be in the public interest that a certain industry should be enabled to continue to thrive.[3] Public interest might result from railways acting in their own interest under pressure of competition.[4]

Where a preference was given to all persons alike upon purely business considerations, there would be a strong presumption that the preference was not undue.[5] In the absence of any disturbing factors the Commission usually acted on the principle that similar charges should be made for similar services.[6] When a railway company ignored directions to a general carrier and delivered parcels to its own agents, thus giving them a special advantage the law condemns such action as giving undue preference.[7] In the James Bannatyne & Sons case, a trader was both a shipowner and a miller; purely in his capacity of shipowner he was entitled to and was given a rebate on certain traffic. It was ruled, however, that by giving him the rebate, he was benefitted not only in his capacity of shipowner, but also as a miller, and this was held to be a prejudice to others who were not shipowners but millers only.[8]

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1. In re Taff Vale Ry. Co,, 1900; 11 Ry. & Canal Traffic Cases, 89.
2. Castle Steam Trawlers, etc., 149.
3. In re Taff Vale Ry. Co., 1900; 11 Ry. & Canal Traffic Cases, 93.
4. Castle Steam Trawlers, etc., 145.
5. Inverness Chamber of Commerce v. Highland Ry. Co., 1901; 11 Ry. & Canal Traffic Cases, 218.
6. Timm v. N.E. Ry. Co. etc., 1901; 11 Ry. & Canal Traffic Cases, 214
7. Ford & Co., v. L. & S. W. Ry. Co., 1890; 7 Ry. & Canal Traffic Cases, 111.
8. James Bannatyne & Sons, Ltd., v. Great Southern & Western Ry. Co. of Ireland, 1904; 12 Ry. & Canal Traffic Cases, 105, 122.
Forword Brothers v. Great Northern Ry. Co., 1904; 12 Ry. & Canal Traffic Cases, 218.

In complaining of the rates charged from one palce as compared with those from another, account must be taken of the differences in circumstances on different sections of the same system, in the services performed and other factors such as capital cost, volume of traffic, competition and the like which entered so largely into the fixing of a rate for a particular traffic.[1] No case of undue preference could be made by comparing the local rate of one railway company with the through rate of another over its line.[2] It would not be undue preference for a railway company to serve one of two traders in the same line of business on more favorable terms than his rival in trade was served by another railway company.[3]

<u>Group</u> <u>rates</u>.- Grouping was authorized by section 29, of the Railway and Canal Traffic Act, 1888. A railway company might lawfully group together any number of places in the same district situated at various distances from any point of destination all places comprised in the group to any point of destination. The law was merely permissive.[4] There were only two Parliamentary limitations; one was that the distances grouped should not be unreasonable and the other that neither the group rates charged nor the places grouped should be such as to create an undue preference. Since the legislature had definitely recognized the principle as a practice beneficial to the public, any attempt to establish in a

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[1] Chance and Hunt, Ltd. v. Great Western Ry. Co. etc., 1911-1914; 15 Ry. & Canal Traffic Cases, 145.
[2] Lever Brothers v. Midland Ry. Co., 1909; 13 Ry. & Canal Traffic Cases, 301, 310.
[3] Ibid, 312.
[4] Abram Coal Co. etc., 135; North Lonsdale Iron & Steel Co. v. Furners Ry. Co. etc., 1891; 7 Ry. & Canal Traffic Cases, 146, 148.

group rate a mathematical equality in respect of charges or advantages between places which were outside the group and the different members of the group would be useless and void.[1]

As to the reasonableness of distances in the places grouped, it would have to be decided in each case according to its circumstances.[2] Eleven miles was held reasonable in one case and fourteen miles unreasonable in another.[3] A grouping was held excessive, where its advantages of grouping were all in one direction.[4] Where there was a group rate which was justified on the grounds of commerical convenience, the measure of what amount of preference would amount to an undue preference would be different from that applicable where no such rate existed. In the North Lonsdale Iron and Steel Company case, the works of the complainant and there other works were grouped together by the railway companies and charged them a uniform rate of carriage, except that that the complainants were charged 6d for a ton less than the owners of the other works in support of coke. The distances of the four works from the common junction point were respectively 18, 27, 28 and 38 miles. Upon complaint, the Commission held that so far as the rate for coke was concerned the railway companies had made sufficient allowance for the difference in the distance between

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[1] Pickering Phipps, etc., 87; Port of London Authority v. Midland Ry. Co. etc., 1911-1912; 15 Ry. & Canal Traffic Cases, 23, 35.
[2] North Lonsdale Iron & Steel Co. etc., 146, 153.
[3] Pickering Phipps, etc., 88; Carrickfergus Harbour Commissioners and others v. Belfast and Northern Counties Ry. Co., 1897; 10 Ry. & Canal Traffic Cases, 74.
[4] North Lonsdale Iron & Steel Co. etc., 153.

the works. But as regards the pig-iron rates, the scale was not uniform;in the case of complainant, the rate for pig-iron amounted to 73 as against 63 of a penny per ton per mile. The places grouped together were at such distances apart as to create an undue preference in the conveyance of pig-iron.

Grouping must be elastic. Certain iron works were grouped together. The grouping was justified by the Commission, subsequently the railway company took one of the iron works out of the group. Upon complaint the Commission stated that a group once formed would not be necessarily final.

"Section 29 of the Railway and Canal Traffic Act, 1888, did not prevent a railway company from grouping de novo, or from dissolving a group or taking one place out of it in the sense of leaving the others in and not putting a certain one in."[1] If groups were to be considered rigid and irrevocable, it would be hardly possible to comply effectively with the provision of sub-section 2 "that the group rates charged and the places grouped together shall not be such as to create an undue preference."[2]

Difference of Treatment. A "difference of treatment" within section 27, of the Act of 1888 meant such matters as a difference of facilities, something resulting in a difference in advantage given to one trader in matters other than charges. But a difference in treatment which did not result in a lower charge would not be within the section.[3] "Lower charge" and "difference in treat-

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1. Milton and Askam Hematite Iron Co. v. Furners Ry. Co. 1903; 12 Ry. & Canal Traffic Cases, 1.
2. Ibid.
3. Lever Brothers, etc., 302-333.

ment" were not the same things. Difference of treatment would not necessarily involve undue preference, unless the latter can be proven. Before the onus was cast upon a railway company of showing that the difference did not amount to an undue preference, the complainant must prove that the difference in treatment was one which prima facie gave some advantage to his competitor and some disadvantage to himself.[1]

Preferential rates. The subject matter of complaints as to undue preferences fell under two heads; first differential rates, which we have just discussed in the preceding pages, and second, preferential rates. Differential rates were those concerned with disparities in domestic rates and included as sub-heads, export rates, group rates, and rebates. Preferential rates were those concerned with disparities between home and import traffic. The only case of importance on preferential rates was that of the Mansion House Association decided in 1895, the hearing of which lasted eight days.[2]

Section 27 of the Act of 1888, on which the case was decided, was interpreted so as to place home and foreign merchandise in a position of strict equality. The law did not prohibit all inequality in rates as between home and foreign merchandise; its object was not to give to home traffic a preference over foreign traffic. Among the considerations affecting the case was not to

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1. 1. Olympia Oil and Coke Co v. North Eastern Ry. Co., 1913; 15 Ry. & Canal Traffic Cases, 166, 173.
2. Mansion House Association, etc., 20; see also discussion in Parliament on the case, Han. 1895, v. 33, PP. 1530-1550.

be included the fact that the goods were foreign as distinguished from home merchandise. If the railway companies had facts which would justify the difference, had the goods been home goods, the companies could not be debarred from relying on those facts as answers, merely because the goods were of foreign origin.

The element of home versus foreign merchandise being eliminated, the case was heard and decided as other cases of undue preference. Cost of service was relied upon. It was shown that the rates for the home traffic covered a variety of services, such as weighing, loading, switching, and provision of station accomodation which were not included in the rate of foreign goods. The foreign merchandise could be more easily and expeditiously handled and dealt with at times more convenient to the railways, always in large quantity and generally in a much more economical manner.[1]

The question of rebate involved various difficulties out of which cases arose. The first source of contention had been with regard to those charges that had no other Parliamentary limitation than reasonableness.[2] A rate is composed of two parts, one for conveyance and one for incidental services. No rebate could be made from conveyance charges. Incidental services had not been itemized and the charges for them specified. Shippers often contended that certain incidental services formed a part of conveyance duty.

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1. See report of Departmental Committee on Preferential Treatment, 1906; v. 55.
2. Manchester, Sheffield and Lincolnshire Ry. Co. v. Piedcock & Co., 1896; 10 Ry. & Canal Traffic Cases, 150, 157.

The second source of contention arose out of the fact that a railway rate was arrived at, not by attributing to each head of services a certain sum and then adding them up, thus determining the total, but by fixing an aggregate sum to cover all the services.[1] The trader, usually not recognizing this fact, did not hesitate to accuse the railway companies of undue preference by comparing one rebate with another. In general, rates included charges for terminals but where a rebate had to be made on such traffic as did not ordinarily require or use station accomodations or station services, the difficulty was greatly increased.[2]

The third source of contention was the standard of measure of a rebate and this the Commissioners had not been able to agree even among themselves.[3] Commissioner Price urged that rebates ought to be a reasonable sum in respect of the service performed, while Commissioner Miller emphasized that the test should be the cost of service to the person who performed it himself instead of having it performed for him by the railway companies. Commissioners Peel and Bigham and Justice Brighton held that the saving to the railway companies should be the measure of the proper amount of rebate.

The London and North Western Railway Company charged rates which included charges for collection and delivery.[4] Messrs.

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1. Pickford's Ltd. v. L. & N. W. Ry. Co., 1907; 13 Ry. & Canal Traffic Cases, 31, 50, 76.
2. Vickers, Sons and Maxim, Ltd. v. Midland Ry. Co., and others 1901-1902; 11 Ry. & Canal Traffic Cases, 249, 260.
3. Pickford's Ltd. v. London v. North Western Ry. Co., 1907; 13 Ry. & Canal Traffic Cases, 31; Compare Menzies v. Caledonian Ry . Co., 1887; 5 Ry. & Canal Traffic Cases.
4. Pickford's Ltd. etc., 1907, 31, 51.

Pickford who were competitors in London were entitled to a rebate, where they performed collection and delivery themselves. Upon complaint in 1907 that it rebates allowed, especially in the cases of goods carried at "special" rates, were unduly low and that the railway company thereby unduly preferred themselves, the Court of Appeals declined to adopt the standard urged by the applicants that rebates out of collection and delivery should be equal to the charges made for the same services when station to station rates were charged. A rebate must be based on the cost of each consignment. The measure of the rebate as stated by Commissioner Peel ought to be either the bare cost which the railway company was saved by the competing shipper doing the work or that cost plus the profits (if any) which the railway company would have earned. It would be reasonable for a railway company to vary the cartage charge in proportion to the total length of journey.

Apportionment of rates. Where a through rate stood unchallenged and unthreatened, apportionment was outside the jurisdiction of the Commission.[1] But if the parties could not agree, the Commission would have power to apportion the through rate. Through rates to be apportioned must be definite.[2] Full particulars were required of rates proposed for apportionment which should include their amount, the termini for each rate and the rate between those

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[1] Manchester Ship Canal Co. v. London & North Western Ry. Co., 1910, 1911; 14 Ry. & Canal Traffic Cases, 141, 142.
[2] Forth and North British Ry. Co. v. Great North of Scotland and Caledonian Ry. Co., 1897, 1898; 11 Ry. & Canal Traffic Cases, 1; Dearne Valley Ry. Co. v. Great Northern Ry. Co. etc., 1914; 15 Ry. & Canal Traffic Cases, 202.

termini. Through land and sea rates were not to be apportioned according to mileage.[1]

Distinguishing rates. Section 14 of the Regulation of Railways Act, 1873, as amended by section 33 of the Railway and Canal Traffic Act, 1888, enabled a shipper without the help of the Commission, to call upon a railway company under certain circumstances to distinguish a rate for him at any time.[2] In distinguishing a rate, it would not be sufficient to show the items of service without specifying the amount of expenses for each, nor the amount of expenses for all services whatever they were without itemizing the services performed.[3] The power of distinguishing did not apply to sidings or junctions, and the Commission possessed no jurisdiction to order such rates to be distinguished.[4] The distinguishing of a rate used need not be based on the cost of each service; it is sufficient to state how much each service was "charged."[5]

Who was entitled to have his rates distinguished? The answer involves a correct interpretation of the words, "persons interested" in the section. In several cases the railway companies contended that "persons interested" were only those persons whose traffic was actually conveyed on the line and who actually paid

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[1] Great Southern and Western Ry. Co. v. City of Cork Steam Pŏcket Co., 1912; 15 Ry. & Canal Traffic Cases, 67.
[2] Pelsall Coal & Iron Co. v. London & North Western Ry. Co. (No. 1) 1889; 7 Ry. & Canal Traffic Cases, 1; Pickford's Ltd. v. L & N.W. Ry. Co., 1905; 12 Ry. & Canal Traffic Cases, 154, 162; British Portland Cement Manufacturers, Ltd. and Charles Nelson & Co. v. Great Eastern Ry. Co. etc., 1914; 15 Ry. & C anal & Traffic Cases, 213.
[3] Pickford's Ltd. etc., 1905; 154, 161.
[4] Pelsall Coal & Steel Co. etc., (No. 2) 1891; 36.
[5] Pickford's Ltd. etc., 1907; 37.

the rates. The Commission held that the expression included "all persons who have a bona fide interest in knowing how the particular rates are made up."[1]

The power of the Commission, in ordering rates to be distinguished was limited to rates in a rate book. The Commission possessed no power of ordering quoted rates[2] to be distinguished.[3]

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[1] Tomlinson v. London & North Western Ry. Co., 1890; 7 Ry. & Canal Traffic Cases, 22; Pelsall Coal & Steel Co. etc., (No. 1) 1889; 1, 15; Smith, Stone and Knight., Ltd. v. London and North Western Ry. Co. etc., 1914; 15 Ry. & Canal Traffic Cases, 321, 327.

[2] Quoted rates are rates quoted by a railway company on the application of a certain shipper.

[3] Pelsall Coal & Steel Co. etc., (No. 1) 1889; 1, 17.

CHAPTER X

Revision of Goods Classification and Charge Schedules

The revision of goods classifications and maximum rate schedules marked a distinct step of progress in the legislative history of rate regulation. It was realized only after many years of hard struggle. The dissatisfaction with the working of the crude classifications and schedules reached probably as far back as the date of the first enactment in the special acts. The maximum rates specified and the classifactions given had become altogether inapplicable to the changed and still changing circumstances. They had been enacted for the most part in the early day of railways when the idea prevailed that railway companies were not common carriers. The classifications were very incomplete and no uniformity in rating goods was observed either as between the special acts of different railway companies or even among the various special acts of the same railway company. Railway companies were basing their charges on the Clearing House classification mutually agreed upon between themselves. The public was supposed to be protected against extortionate charges by the maximum rate clause in the special acts of each railway company. The protection was, however, nominal and valueless. The statutory maximum rates as we have seen were all fixed too high for this purpose.

In 1890 or about the time of revision there were found to be 900 acts dealing with the charging powers of 976 railway com-

panies.[1] In some cases reference had to be had to more than fifty acts of one railway company in order to determine the rate the railway company was authorized to charge.[2] The sections contained in the acts relating to rates had varied very considerably at different times. The charging powers of the railway companies were not clearly defined. The power to charge terminals where given was limited by a clause only requiring the charge to be reasonable. The general consequence of all these defects was that the public were left in ignorance as to whether the charges imposed upon them were or were not in excess of the statutory powers of the railway companies. The need of a revised classification of goods and schedules of maximum charges was therefore urgent and imperative.

As early as 1867 a Royal Commission on Railways definitely recommended a revision proposing the adoption of the Clearing House classification as a basis. "The enumeration and classification should be stated at length in a general railway Act."[3] Both the Royal Commission and the Select Committee recognized the fact that "the Clearing House Classification is altered from time to time to meet the varying wants and circumstances of trade." The Royal Commission proposed to meet this need by compelling railway companies to apply to Parliament before making such changes and the Select Committee, by giving power to their proposed Commission.

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1. Report of Board of Trade, 1890, p. 6.
2. Report Select Committee 1882, v. 13, p. VII.
3. Report Royal Commission 1867 LXVII (245).
4. Report Joint Select Committee 1872, v. 13, p. XXXVII.

"A uniform classification of goods and merchandise," said the Select Committee of 1882, "ought to be adopted by the railway companies as between themselves and the public, such as, under the name of the Clearing House Classification is already in use as between themselves only."[1] In a memorial addressed to the Board of Trade,[2] in 1879 by the Incorporated Chamber of Commerce of Liverpool it was recommended, among many other important things, that the railway companies should be compelled by law to adopt the Clearing House Classification and that all railway and canal companies should be required to submit for the approval of the Commission, revised tables of rates formed on that classification. In 1886 after Mr. Chamberlain failed to pass his Bill, railway companies made strong efforts to introduce their own Bills embodying the revision of classification of goods and schedules of charges. Thus, the revision was urged by both parties for several years.

It was only after the passing of the Railway and Canal Traffic Act, 1888 that the revision was realized. One of the most important clauses of the Railway and Canal Traffic Bill was the 24th Clause which, a little modified, became the 24th section of the Act, authorizing the revision of the classifications and schedules. Each railway company was required to submit to the Board of Trade a revised classification of merchandise traffic and a revised schedule of maximum rates and charges with a

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1. Parliamentary Papers, 1881, Vol. XIII, P. XX.
2. Parliamentary Papers, 1879, Vol. LXIII (162).

separate statement as to the amount of terminal charges.[1] Any objection to the revised classification and the schedule was to be lodged with the Board of Trade, which was to consider and adjust the differences.[2] After the classification and schedules had been agreed upon, the Board of Trade was to introduce to either House of Parliament a Bill embodying such agreed classifications and schedules in the form of a Provisional Order.[3] In the case of any railway company neglecting this duty or any difference which could not be agreed upon, the Board of Trade was to recommend such classification and schedule as in its opinion should be adopted by the company and proceed as before for an act to confirm the Provisional Order.[4] The rates and charges mentioned in the Provisional Order after being confirmed by an act would come into operation, the railway company being entitled to charge accordingly.[5] Any amendment of the classification or the schedule might be proposed by either a person or a railway company in a prescribed manner of application to the Board of Trade, a notice of fourteen days being given. The result of such application would be published in the "London Gazette", taking

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1. Act, 1888, S 24, subsection 1.
2. Act, 1888, S. 24, subsection 3.
3. Act, 1888, S. 24, Sub. 4, 5.
Sub-sections 4 and 5 of section 24, Railway and Canal Traffic Act, 1888, were amended in 1892 by the Railway and Canal Traffic Act, 1892 (55 and 56 Vict. C. 44). The sub-sections provided, in case of disagreement, that a recess should intervene between the report presented by the Board of Trade and the legislation consequent upon that report. As there was no necessity for this delay, a Bill was introduced by Lord Balfour to amend it and was passed on June 27, 1892. The sole object was to enable the Board of Trade to act in the same session in which they presented a report. Han. 1892, V. 5, P. 1677.
4. Act, 1888, s. 24, sub. 6, 7.
5. Act, 1888, s. 24, sub. 10.

effect on the day of publication.[1]

When the revision was actually taken up, the railway companies contended that the classification mentioned in the Act was a Parliamentary Classification but the shippers were of the opinion that the Classification would be a working classification.[2] Irish traders were principally concerned with the proposal to make the classification and schedules uniform.[3] These are some examples which suggest the kind of opposition that was overcome.

On November 18, 1888, rules, regulations and forms with respect to the revision of classifications of merchandise traffic and schedules of maximum rates and terminal charges, were issued to the Railway Company by the Board of Trade. The revised classification and schedules were required to be submitted by every railway company "as soon as possible after the passing of the Act."[4] Railway Companies were required to state the proposed maximum rate per truck per mile or per ton per mile for the first, second, or third certain number of miles. A schedule of terminal charges, showing their nature and amount and a statement of the existing maximum rates were to be given. Separate forms each containing this information were to be filled up for mineral traffic, for goods, for animals, for exceptional articles, for small packages and a separate statement of regulations as to merchandise traffic was also to be filed. Where a railway company was unable to set

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[1] Act, 1888, s 24, Sub. 11.
[2] Han. v. 339, p. 548.
[3] Han. v. 339, p. 1764.
[4] Herapath's Railway Journal, Sept. 8, 1888, p. 1022.

out the existing maximum rates and terminal charges for each species of traffic they must supply a printed schedule of the charges in force with the authority for each of them. In all cases three printed copies of these schedules were to be supplied, one stamped with the seal of the railway company and signed by the secretary.

By about February 10, 1889, after making known to all the railway companies the rules, forms and notices, the revised classifications and schedules of all the principal railway companies were in the hands of the Board of Trade. April 10 was fixed as the last day for filing objections to these classifications and schedules, but on the representations of the shippers, the time was extended to June 3. There were more than 4000 objections from over 1,500 persons and organizations. A very large percentage of the objections referred to the details of the classifications. Although the classifications and schedules sent in by the railway companies were based chiefly on the Railway Clearing House Classifications, yet there were many variations. As some of these objections and differences were capable of being settled by personal conferences between the shippers and the railway companies, a circular was sent out to this effect, with the result that many conferences were held and numerous differences amicably settled.

But there were still left many objections which the Board of Trade found itself bound to take up, article by article, and to hear the arguments on both sides. Under the authority given by the Act[1], two Commissioners Lord Balfour of Burleigh and Mr. Courtenay Boyle, were appointed by the Board of Trade. They were given the charge of the preparation and consideration of the

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[1] Act, 1888, s. 24, sub-section 9, Report of Board of Trade p.6,'90

schedules and classifications. The hearing of the objections was also assigned to them. Formal inquiry was conducted by them in different parts of the country, beginning on October 29, 1889, in Westminster Town Hall. They sat 73 days in London, 8 days in Edinburgh, and 4 days in Dublin; the inquiry lasting over into 1891. At the hearings, the schedules and classifications of the London and North Western and the Great Western Railway Companies were taken as representative. The principles established in these cases were made to apply, however, to all other railway companies.

To meet the objections and differences on both sides, the railway companies and the public, was by no means an easy task for the Board of Trade. Great difficulty was experienced in bringing to a compromise the rival contentions, the railway companies on the one side demanding unswervingly non-interference of their sanctioned power and rights on which they invested their money, and the traders on the other urging with equal force that those powers and rights were granted at a time when railway system was in its infancy, when the only measure of rates was that contained in the old canal acts and when nothing whatever was known of the cost of railway conveyance.[1] The Board of Trade had nothing to guide it except the vague words "Just and reasonable."[2]

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[1] Report Board of Trade, p. 7, 1890.

[2] In the House of Lords an amendment was made that the new maximum rates and charges should be such as it would be "just or reasonable to substitute for the existing maximum rates and charges, as upon the whole equivalent to such existing maximum rates and charges."

A subsequent amendment stated that the rates were to be considered reasonable, having regard to the existing statutory powers of the railway companies and to the reasonable requirements of the public and the shippers.

But both amendments were rejected.

The Board aimed to be just and reasonable to both sides. It did not accept either the old maximum rates and classifications sanctioned in the special acts, nor the actual rates that were then in use. However, its revisions were, to a great extent, based on the exisiting rates, with a reasonable margin to enable the railway companies to meet possible changes of conditions in the future. It did not allow the demand of the traders for a uniform reduction of all rates, based on the competitive rates nor did it accept the method of fixing rates according to mileage run, based on the relation of cost and profit to capital. In short, it recognized the abnormalities occurring in the existing rates and, whenever possible, tried to modify the same. A simple graduated scale of maximum charges was adopted, although the railway companies recommended a cumulative acale of decrease.[1] Power was given to the railway companies to make terminal changes for such services as were actually rendered. Under certain conditions a trader was allowed to perform any terminal service himself.

In classifying the articles, the Board of Trade followed mainly, though not wholly, the Railway Clearing House Classification. The division into eight classes was retained but class S of the Railway Clearing House Classification was changed to Class C. In arranging articles to particular classes, the value, weight, bulk and quantity were all taken into consideration but no special effort was made to assign, with any degree of accuracy, the proportionate value to be attached to each. All unenumerated articles were to be charged the rates of Class 3 instead of Class 5, as proposed by the railway companies.

After the objections had been carefully considered and met

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[1] See Appendix VIII.

as far as circumstances allowed, the Board of Trade finally submitted to Parliament, in 1891 and 1892, a series of thirty-five Provisional Orders embodying the revised classifications of merchandise traffic and schedules of maximum rates and charges. These Orders were subjected to a further exhaustive examination by a Joint Committee of the two Houses in the sessions of 1891 and 1892. After considerable modifications at the hands of the Committee[1] they became law under the Railway Company (Rates and Charges) Order Confirmation Acts, 1891 and 1892. The leading railway companies had each an Order to itself; the smaller railway companies were dealt with in groups.

The eight classes of the now authorized classification were A. B. C. and 1 to 5. Class A was applied to consignments to four tons and upwards. When merchandise specified in Class A. was consigned in quantities of less than four tons and not less than two tons, the railway companies might charge for such consignment the conveyance rates applicable to Class B and if less than two tons the conveyance rates applicable to Class C. In Class A the chief articles were minerals.[2] Class B was also applicable to consignments of four tons and upwards. When the consignment was less than four tons, the same rule of Class A would apply. Class B comprised higher classes of minerals. In Class C. the consignment was to be of two tons or more and the articles included were chiefly chemicals, agricultural products and manufactured iron.

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1. See Appendix IX.
2. Railway Rates and Charges order Confirmation Acts, 1891 and 1892, c. 6832, House of Commons, 1892, v. 70, p. 21.

From Class 1 to Class 5, comprised the rest of miscellaneous articles such as manufactured goods of various kinds, implements, drapery, dyewoods, fish, fruit, grain, groceries, hardware, and oils not dangerous.

The schedule of maximum rates and charges was divided into six parts.

Part 1. Maximum rates and charges for all the classes of merchandise specified in the classification.

Part 2. For animals.

Part 3. For carriages.

Part 4. Exceptional charges

Part 5. For perishable merchandise by passenger trains

Part 6. For small parcels.

The maximum rates for conveyance of goods and minerals were divided according to distances.[1] For the first 20 miles the rate per ton per mile was on a higher scale but for the next 30 or 50 miles, or the remainder of distances the rate was on a decreasing scale respectively according to the distances. For most of the railway companies the same uniform scale, as that of the Great Eastern Railway Company, of maximum rates was provided for all the eight classes, A. B. C. and 1-5 without exception. But the scale of maximum rates was not so simple as that of the Great Eastern or the Midland Railway Companies. The rates were made to adopt to the peculiar conditions and circumstances of each railway company. For instance in the London and Northwestern Railway Company schedule there were five scales which were again divided into three groups (A. B. and C.). The first group which consisted

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[1] See Appendix I (a) Part 1.

of three scales referred to rates in respect of merchandise comprised in Class A only, the second group referred to rates in respect of merchandise composed in Classes B, C and 1 to 5 and the third to rates in respect of merchandise comprised in Class B only. The three scales in the first group were divided according to railways; first, applicable to such portions of the railways as were not specially mentioned, second, applicable to the railways specially mentioned and the third, applicable to the Cannock Chase Railway. The scale in the second group was applicable to such portions of the railways as were not specially mentioned. The third group which was applicable to the railways specially mentioned were rates in respect of merchandise comprised in Class B only. The same principle was applied to the revision of the schedules of the other railway companies and the same kinds of variations appeared in their schedules.[1]

Besides the maximum conveyance rate specified, railway companies were authorized to charge for terminal stations and services, the maximum charges for which were also prescribed. Terminal

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[1] The following table gives some idea of the differences in the scale of the maximum rates of a few leading railway companies:

Maximum Rates

I	II	III
Identical	Slightly higher than List I	Slightly higher than List II
London & North Western Railway	Midland Railway	Brighton Railway
Great Western Ry.	Great Eastern Ry.	South Western Ry.
Great Northern Ry.		South Eastern Ry.
		L. C. and Dover.

Provisional Order Bills Report, 1891, Part 1, p. 432.

Charges were divided into two kinds, maximum station terminals and maximum service terminals. The maximum station terminal was the maximum charge which the companies might make to a shipper for the use of the accommodation (exclusive of coal drops) provided, and for duties undertaken at the terminal station by the companies as carriers. The maximum service terminals were the maximum charges which the companies might make to a trader for loading, unloading, covering and uncovering merchandise which would include all the charges for the provision by the companies of labor, machinery plant, stores, and sheets. Service terminals could not be charged if a shipper undertook to do the service himself or if he requested for the same but was refused by the company. Maximum charges for station terminals at each end were provided for the eight classes; for the first three classes, A.B. C. the charges were on an increasing scale and for the last five classes, 1-5, the station terminals were the same in each case.[2] There were no charges for service terminals on Class A and B goods, as the services were not required. The charges for service terminals on the rest of classes (C and 1-5) were also on an increasing scale in each case.

Railway companies also possessed power to make certain special charges. When a Company performed at the request of a trader or for his convenience, certain special services, a charge could be made in addition to the maximum rate for conveyance. The services for which a special charge could be made was specified.[3]

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1. Analysis v. 70, 1892, p. 131.
2. See Appendix 1, (c). Maximum Station and Service Terminals.
3. See Appendix, 1, (d)

Charges could also be made for the use of wagons not included in the maximum rates for conveyance. These charges were limited to certain maxima.[1] The right of making charges for privare sidings, etc., under agreement was sanctioned.[2] Any service in connection with transhipment might be charged to the trader.

Maximum charges for the conveyance of animals were also divided according to distances, as in the case for the conveyance of merchandise and minerals.[3] Animals might be conveyed per head or per wagon. The latter was charged by size of the wagons and the former by the class of animals. Station and service terminals were also specified and a minimum total charge per consignment was required.

The conveyance of carriages could be charged only according to certain maixma specified.[4]

The exceptional class was provided for the conveyance of merchandise or articles of exceptional bulk, weight, or value.[5] Parliament required only that the charge should be reasonable.

Perishable merchandise was divided into three groups. Milk formed the first group. The maximum rates were fixed according to distances and by imperial gallons.[6] Maximum rates for the conveyance of empty cans were also specified. Butter, fish, fruit and vegetables formed the second group. They were charged by hundred weight per mile according to the distance conveyed.

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1. See Appendix, 1 (d)
2. Analysis, P. 104.
3. See Appendix, II.
4. See Appendix, III.
5. See Appendix, IV.
6. See Appendix, V.

Station and terminal charges were specified.

For the carriage of small parcels, railway companies could made an additional charge within certain maxima in addition to the maximum rates for conveyance and maximum station and service terminals.[1]

The rates scheduled in Parts I to VI were the maximum rates for conveyance by the merchandise train and included the provision of locomotive power and wagons by the company, except that in the maximum rates applicable to merchandise specified in class A of the classification, the provision of wagons was not included. When the railway company did not provide the wagons for merchandise in classes other than class A, the authorized maximum rates were to be reduced. When the distance did not exceed 50 miles, the amount to be reduced could be determined by an arbitrator to be appointed by the Board of Trade.[2]

Maximum rates for the conveyance of empties, sacks, bags, wagons, etc., were specified. Rules for weighing and for charging fractions of a mile, of a penny, etc., were carefully laid down.[3]

The revision was carried out to its finish in 1892. No one who has studied the course of the three years' controversy on the revision of schedules and classifications from 1889 to 1892 could fail to be impressed with the fairness with which both the Joint Committee and the Board of Trade approached the subject as well as with the comprehensive and thoroughness of their inquiry and work. Three things were accomplished: first, the codification

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1. See Appendix, VI.
2. Analysis, P. 102.
3. See Appendix, VII.

and reduction into order of the scattered provisions relating to the charging power of the railway companies; second, the revision of classifications and schedules; third, the fixing of the maximum terminal charges and the recognition of the right of the railwaycompanies to make such charges. The new legislation effected, however, as Professor Mavo said, only a series of compromises by offering a series of propitiations.[2] The small shipper was propitiared by the refusal to the large shipper of the benefit of a reduced rate for train loads. The trader in through traffic was propitiated by the cumulative scale. The trader in heavy goods, coal,iron were on the whole, most benefitted by a substantial reduction of rates. The railway companies, though greatly disappointed as result of the reductions in some of the maximum rates they proposed, yet obtained powers of increasing charges in the higher classes of goods. The right of making terminal charges was now definitely within the statutes. The public was enabled to ascertain, without intricate examination of many tens, if not hundreds of difficult and often conflicting Acts of Parliament, what the railway companies were authorized to charge. They were able to know exactly what was the maximum charge and of what component parts it was made up. It remains to be seen whether the new legislation effected chiefly by compromises had solved the problems of railway rates fundamentally and permanently.

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1. Analysis, 106.
2. Quarterly Journal of Economics, 1894, V. 8, PP. 280-318, The English Railway Rate Question by James Mavor.

CHAPTER XI.

The Railway and Canal Traffic Act, 1894.

The revised classification of merchandise traffic and the schedule of maximum rates were to go into operation on January 1, 1893. After the enactment, in 1891, of the first batch of the Railway Rates and Charges Provisional Orders, the managers of 17 principal railway companies met together and decided upon a general raising of actual rates to the revised maxima. This policy was later adopted by all the railway companies of the country. The immediate causes of the general increase in actual rates was twofold. Railway companies had been urging before the Board of Trade that the revision of the classification and schedules should be so arranged that no loss of revenue would result.[1] But the Committee of the Board of Trade did not agree with this. For some rates it adopted the basis of the then existing rates and others were reduced without regard to actual rates. In all cases they left, however, a margin of profit for possible changes of circumstances affecting either the cost of the carriage or the returns of the railway company.[2] The first cause of the adoption of the new maxima as actual rates was a reactionary attempt to recoup themselves as far as possible for losses resulting in the part of the companies from the reduction of rates.[3] The second

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[1] Second Report, Select Committee on Railway Rates and Charges, 1893, V. 14, P. IV.
[2] Second Report, Select Committee, 1893, V. 14, P. IV.
[3] Smith and Forest v. L. & N. W. Ry. Co., 1889; 11 Ry. & Canal Traffic Cases, 164.

cause arose from the difficulties of fixing new rates according to the revised maxima and of putting them into immediate operation. To avoid this difficulty, the companies decided at the outset of the new scheme temporarily to level charges up to the maxima allowed by the Acts.

According to the law, before an increase could take effect, there had to be a special notice of the intention to do so, published a fortnight in advance.[1] For this particular general increase the railway companies asked and secured permission of the Board of Trade to dispense with the form of notice for ordinary increases of rates, the rate books of each station being treated as statutory notice. The legal maximum rates were then sent down to the station masters who were instructed to charge them in lieu of the old rates.

This general increase of rates naturally caused agitation and disturbance throughout the length and breadth of the Kingdom. Numerous questions were asked in Parliament as to whether stepshad been taken to restore the rates to their original basis as that existed before 1893.[2] Immediate action by the government was called for. The first method which was undertaken by the government aimed at a peaceful settlement. The Board of Trade ordered the railway companies to reinstate the rates of 1892 but the latter, at a meeting of their Association, refused to adopt the suggestion. Two resolutions were communicated to the

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1. The Railway and Canal Traffic Act, 1888, Section 33, sub-section, 6.
2. Han. v. 8, 9, 12 and 21. See under Increase in Rates and Charges. Han v. 28, 786.

Board of Trade on March 1, 1893.[1] The one emphasized the fact that the reductions which had been compulsorily enforced should be taken into consideration. They promised, however, by the second resolution that they would make as speedily as possible such concessions as might satisfy the reasonable requirements of the public.

In justice to the railway companies it should be recognized that the railway companies did yield somewhat to the general request and tried to arrange a kind of compromise with the public. A committee of goods managers began to sit early in January, 1893, meeting four days a week for the consideration and determination of complaints; a committee of General Managers was sitting at the same time to meet deputations of traders. They were dealing with the complaints under three methods:[2]

1. By adopting lower class rates for some articles when carried under certain conditions, or
2. By restoring special rates in force prior to Dec. 31, 1892, or
3. By granting special rates approximating to those in force in 1892.

In their letter dated February 7, 1893, to the Board of Trade, the railway companies claimed from the Board of Trade and from Parliament a reasonable time to perform the enormous task of readjustment. Though railway companies had given up by this time the thought of raising all rates to the maxima, yet they still

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[1] Second Report, Select Committee, 1893, V. 14, P. VIII.
[2] Han. V. 8, 1893, PP. 559-662.

sought to have a general increase of 5 per cent and at a later period of 2-1/2 per cent.

Had the readjustment of rates and charges been satisfactorily carried out within a reasonable time, Parliamentary interference would have been unnecessary. As the direct negotiation between the railway companies and the Board of Trade seemed to be of little effect, members in Parliament urged the appointment of a Select Committee.[1] So, on May 16, 1893, a Select Committee was appointed, with Sir Michael Hicks Beach as chairman, "to inquire into the manner in which the railway companies have exercised the powers conferred upon them by the Railway Rates and Charges Order Confirmation Acts, 1891-92 and to consider whether it is desirable to adopt any other than the existing means of settling differences between the companies and the public with respect to the rates and conditions of charge for the conveyance of goods."[2] Two reports were made in the same year, one on August 22, and another on December 14, 1893. The first consisted wholly of minutes of evidences; the second was of greater importance.

In the second report the Committee showed that the margin of profit which was left in the revised classifications and schedules was not for the purpose of enabling the railway companies to recoup themselves for forced reduction of other rates but to meet possible contingencies in connection with increased cost of carriage.[3] It recommended that some step should be taken to pro-

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[1] Han. V. 12, 1893, P. 426, Mr. Mundella's motion, P. 1005 again deferred, P. 729, Mr. Marjoribank's motion, P. 1007, Sir Rollit's motion.

[2] Han. V. 12, 1893, P. 1151.

[3] Second Report, Select Committee, 1893, V. 14, P. IV.

tect traders from unreasonable raising of rates even within the maximum charges and from the imposition of unreasonable conditions of transport. As such power of control had neither been given to any tribunal nor defined in any Act, it would be necessary for Parliament to take some action.[1]

Prior to the date of this report, a rate had been considered as reasonable when it was within the Parliamentary maximum.[2] Parliament had refrained from interfering with rates of the railway companies within the maxima, save in the case of "through rates." Under the Regulation of Railways Act, 1873, the Railway Commission had power to fix a "through rate" if the railway companies refused or neglected to make one. For other rates, reasonableness was never questioned when they were within the maxima. By the Railway Clauses Act of 1845, under section 86, railway companies had been empowered to make any reasonable charge for the conveyance of passengers and goods not exceeding the tolls authorized by their special Acts. This section could be interpreted in such a way as to mean Parliament did intend to question the reasonableness of a rate even within its maxima. Yet there had come up no case between the passing of the Act in 1845 and that of 1888 in which a trader had complained to the Court against a rate on the ground that it was unreasonable, though within the maximum allowed by the special Act of the railway company. No

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1. Second Report, Select Committee, 1893, V. 14, P. IV.
   Han. 1893, V. 17, PP. 1364-1370.
2. North Staffordshire Colliery Owners' Association v. North Staffordshire Ry. Co., London & North Western Ry. Co. etc., 1907, 1908; 13 Ry. & Canal Traffic Cases, 78.

legal decision had been given upon the meaning of the Clause.[1]

The Railway Commissioners pointed out in their annual report of 1878 that it was true that railway charges must not exceed the maximum tolls authorized by special acts but it had been less noticed that they must also be reasonable. There were then many complaints of charges being too high. The Commissioners had no power to deal with these complaints. The question was put to Parliament for consideration as whether it would not be well that this important statutory qualification of reasonableness were made of practical value, and that the Commissioners should be given the power over the reduction of unreasonable charges, just as they had the power over reduction of unequal charges."[2] No action was taken by Parliament of this recommendation since reported. The Railway and Canal Traffic Act, 1888, did not give the Commission the power to determine the reasonableness of rates within the statutory maxima. On the contrary, Section 24, subsection 20 - "that the rates and charges mentioned in a Provisional Order to be framed in accordance with the Act and confirmed by Parliament shall from and after the Act comes into operation, be the rate and charges which the railway companies shall be entitled to charge and make," - made it clear that rates charged within the maxima were not to be questioned. The effect of this section was responsible for the general opinion that a rate was reasonable if within the maximum allowed by the Provisional Orders of 1891-92.

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1. Second Report, Select Committee, 1893, V. 14, P. X.
2. Fourth Annual Report, 1878, V. 25 (C. 1962) P. 6.

The Select Committee of 1893 pointed out that it could not be inferred that Parliament, by Section 24, sub-section 20, meant that all rates were reasonable when within their maxima.[1] Section 31 of the same act enabled traders and in certain cases local authorities to complain to the Board of Trade against which, in their opinion was unfair or unreasonable treatment by a railway company. Under this section, the Committee thought Parliament clearly allowed that a rate, though within the maximum, might be unreasonable and that the intervention of the Board of Trade might thereby, be justifiable. It was necessary, therefore, that, where in the case of the raising of a rate, a trader complained of the new rate as excessive or unreasonable and the Conciliation Clause failed to result in an amicable settlement between the railway company and a trader, the complainant should be enabled at liberty to go before the Commission and that in such a case, the Commission should be empowered to decide whether the increase was reasonable.[3]

In consequence of this recommendation, a Bill was introduced in Parliament in the latter part of 1894, by Mr. Mundella. Before the introduction, however, Mr. Burnie had introduced a Bill on Feb. 1, 1893 to amend the Railway Rates and Charges Order Confirmation Acts, 1891-92 by forbidding any increase of rates above the actual rates in existence prior to January 1, 1893.[4] The

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[1] Second Report, Select Committee, 1893, V. 14, P. XI.
[2] Second Report, Select Committee, 1893, V. 14, P. XI.
[3] Ibid P. XII.
[4] Han. V. 8, 1893, 168, Quarterly Journal of Economics, V. 8, P. 406.

Bill was withdrawn on March 1, 1893.[1] Attempts had also been made to amend the Railway and Canal Traffic Act, but they too failed.[2] Mr. Mundella, in introducing his Bill stated that "when the Traffic Act of 1888 was passed and the Provisional Orders which followed it came into force, the traders found that they had not only been mulcted with the legislation of terminal charges, but had been deprived of one of the most important defenses against extravagant rates - namely, their right to challenge the whole of the rates of railway companies on the ground of unreasonableness."[3] The object of the Bill was to restore to traders the right of attacking all rates in respect of their unreasonableness.

The Bill contained only three clauses. It provided that where a railway company had, since December 31, 1892, increased or might hereafter increase directly or indirectly any rate or charge, it should lie on that railway company to prove that the increased rate or charge was reasonable.[4] It would not be sufficient for this purpose to show that the increased rate or charge was within the provision of any previous Act of Parliament. The chief discussion in Parliament was upon the scope of the Bill. An amendment to limit the traders "to the right to appeal only against the increase of the rate since December 31, 1892" was rejected.[5] It was argued that if the functions of the Commission were limited to increases in rates added since 1892, the railway

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[1] Han. V. 9, 1893, 764.
[2] Sir Hickman, on Feb. 1, and Mr. Williams on Feb. 6, 1893.
Han. v. 8, P. 651, V. 9, P. 764 and V. 11, P. 727, 1893.
[3] Han. V. 28, 1894, P. 638.
[4] Han. V. 28, 1894, P. 636.
[5] Han. V. 28, 1894, P. 641.

companies would be in a position to go before the Commission and argue that because certain rates had been cut down they had a right to make increase in other rates. "To say that the rates previously before 1892 were unchallengeable was most unfair to the traders."[1]

The Bill was passed on August 25, 1894 and became the Railway and Canal Traffic Act, 1894.[2] It consisted of five sections but the first and the fourth were the most important. The first section was divided into five sub-sections. The first sub-section laid the burden of proving any increase in rates reasonable on the railway companies. Power was given to the Commission under the third sub-section to hear and determine those complaints which failed of an amicable settlement. The fourth section empowered the Commission to hear and determine cases of rebates on siding rates. The Act was retrospective and a railway company was liable to pay for such loss and damage. Power was given to the Board of Trade to supervise and to inspect books, schedules or other papers.

The statutory provisions relating to increases of rates were contained in the Traffic Acts of 1888 and 1894. By subsection 6 of section 33, Railway and Canal Traffic Act, 1888, it was provided that when a railway company intended to make any increase in a rate, it must give 14 days notice of the intended increase, in the form prescribed by the Board of Trade. The Board

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1. Han. V. 28, 1894, P. 641.
2. 57 and 58 Vict. C., 54.

of Trade made an order respecting the forms[1] on July 25, 1889. The order prescribed that notice of the intended increase should (a) be published in a newspaper circulating in each of the districts comprising the stations between which the traffic which was to be subject to the increased rate and (b) be printed in large type and posted for 28 days in each of the said stations.[2] It further specified the form of the notice and directed that notice should be in that form without any unnecessary addition. The notice was required to specify, with reference to each altered rate, the date on which it would take effect. One point should be noticed in connection with this. There was no obligation imposed by the statutes or by the order of the Board of Trade, to set out each individual rate which it was proposed to increase. Any complaint as to a notice being generic instead of specific would lose its own ground.[3]

Subsection 6, of section 33 of the Railway and Canal Traffic Act, 1888, was wide enough in its terms to include an increase, by a railway company of all its rates.[4] Under the Railway and Canal Traffic Act, 1888, there was nothing enabling the Commission to prevent a railway company from increasing its rates and charges up to the authorized statutory limit, every rate and

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1. For the forms, see Boyle and Waghorn: Railway and Canal Traffic Act, Vol. 1, PP. 367-371.
2. British Portland Cement Manufacturers, Ltd., and Charles Nelson & Co., v. Great Eastern Ry. Co. etc., 1914; 15 Ry. & Canal Traffic Cases, 213, 224, 230, 232.
3. Ibid, 214.
4. Ibid, 225.

charge within that limit being regarded as reasonable.[1] The Railway and Canal Traffic Act, 1894, was the first attempt made by the legislature to control the charges actually made by a railway company where those charges did not exceed the maximum rates allowed by statute.[2] The Act provided that if complaint were made that increased "rate" was unreasonable, it should lie on the company to prove that the "increase of rate" was reasonable, even the increase was within the maxima. The procedure prescribed was by way of complaint to the Board of Trade under section 31 of the Railway and Canal Traffic Act, 1888, followed by an application to the Railway and Canal Commission.

In this connection it is important to note the real nature and significance of the Railway and Canal Traffic Act, 1894. The Act, on the one hand, protected the public from any unreasonable increase of rates, but, on the other hand, it also protected the railway companies. The absence of any power to compel the railway companies to reduce their charges below the level of 1892 coupled with the right to raise them on proof that the increase was reasonable was regarded as affording real security to investors, in the maintenance of existing rates of dividends. It was this dual character of the Act that constituted the main reason why it was charged with having made rates less elastic than they were before.

Elasticity in rate-making is what the traders need, but it had largely done away by the Act of 1894 in three ways. The same

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[1] North Staffordshire Colliery Owners' Association, etc., 1907, 1908; 78, 84; Rickett Smith & Co., and others v. Midland Ry. Co., 1895; 9 Ry. & Canal Traffic Cases, 107, 114.
[2] North Staffordshire Colliery Owners' Association, etc., 78, 84, 88.

significant effect was preventing railway companies from varying their rates and charges freely. In the first place, when a case of increase went before the Railway and Canal Commissioners, as we shall see in the latter part of the chapter, only one class of evidence was accepted as proving the reasonableness of the increase - evidence of increase in the working costs of the traffic to which the rates applied. By enacting the Railway and Canal Traffic Act, 1894, with such interpretations as given by the Railway and Canal Commission, it implied that the variation of charges could be based only on the differences in expense, trouble and responsibility attending the receipt, carriage and delivery of the different articles. It gave probably all together, a too much undue weight to the principle of cost of service in the process of rate-making. In the second place, the requirement that an increase in rates must be justified of its reasonableness is sometimes a sufficient hinderance to prevent railway companies from experimenting the reduction of rates. Railway Companies would not reduce their rates and charges as readily as if there was no such requirement. Railway companies would have no stimulus to reduce rates and charges if the only consequence was that they could never raise them again without going through justifications which might be very difficult under the circumstances. In the thrid place, the decision of the Railway and Canal Commission, as in the case of the North Staffordshire Colliery Owners' ASSOciation, 1907, which we shall see later, rendered the constitution of the first section of the Act of 1894 to mean that the necessity for justification would apply also to the re-raising

of rates which had been lowered since 1892, but re-raised to a point not exceeding the level of 1892. The justification of reasonableness was required for all kinds of future increases after 1892 - increases either above or up to the level of 1892. For these reasons railway companies would hesitate to vary their rates and charges very readily to meet the demands of traffic or the expanding industry of the country. The result was that rate-making was less elastic and that the power of the railway companies to vary their rates was greatly curtailed. The railway companies were greatly dissatisfied but it did not exist very long before there was an opportunity for the railway company to bring about some fundamental changes.

The Railway and Canal Traffic Act, 1913.

In August, 1911, a sudden and serious strike took place on the railway system of Great Britain. The government found it necessary to intervene, as the situation was critical not only for national but also for international reasons.[1] A Royal Commission was appointed, and proposals of settlement were recommended. The railway companies would not accept the proposals of the Royal Commission without a recognition of their moral right to recoup themselves to a certain extent. The demand of the railway companies was consented to and an understanding between the railway companies and the government was reached. The understanding was that "the government will propose to Parliament next Session (August, 1911) legislation providing that an increase in the cost

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[1] Han. V. 47, P. 1571.

of labor due to the improvement of conditions for the staff would be a valid justification for a reasonable general increase of charges within the legal maxima, if challenged under the Act of 1894."[1]

A Bill to the effect was introduced on December 4, 1912, by Buxton, then President of the Board of Trade. It contained only one clause. The Act of 1894 required a railway company to justify an increase of rate, if challenged, but did not indicate what circumstances were to be regarded as a valid justification in any given case. Consequently, there was doubt confronting the railway companies as to how far a general increase in the cost of working due to an actual increase in the cost of labor would be allowed to justify an increase in a particular rate. The sole object of the Bill was to remove this doubt and to enable the Commission to put the increased general cost arising from improved conditions of labor generally on the same basis as any increased cost arising from and directly affecting any particular branch of traffic.[2]

The Bill was carefully restricted.[3] In the first place, the sole possibility of justification for an increase of rates under the Bill must be an actual and operative improvement in the conditions of the employment of the staff. In the second place there must be a net increase in the cost of labor, an actual increase due not to normal increase of work, but to improved conditions of the staff itself. In the third place, the Bill was worded in

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1. Han. V. 47, 1912, P. 1572-72.
2. Han. 1912, V. 47, PP. 1576-77.
3. Han. V. 47, 1912, P. 1579; 1912, V. 49, P. 29.

such manner as neither to weaken nor to diminish Section 1 of the Act of 1894 and the onus of proof was still left on the railway companies.

The Bill met considerable opportion in both Houses[1] and it was termed an "unpopular Bill."[2] There was great apprehension that the Bill would confer on the railway companies new and additional power to enlarge or increase a rate and that the Parliamentary maximum would thus be affected. Doubts were expressed as whether the Bill might not have already gone much further than it was ever intended.[3] But under pressure by the Government, the Bill was passed. Mr. Lloyd George stated in the House of Commons that "we feel in honor bound, not merely personally, but as a government, to use whatever influence we possess with the House, to see that the pledge is redeemed not merely in the letter, but in the spirit.[4] The government intimated at the same time that something drastic to coerce the powers of the railway companies would be introduced in Parliament at a later date.[5] There were many members who supported the Bill purely on this understanding that such a Bill would be soon introduced.

The Bill received Royal assent on March 7, 1913,[6] and became the Railway and Canal Traffic Act, 1913.[7] The Act contained onlt three clauses, the first clause by far the most important. The Railway and Canal Commission would treat the increase of rates

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[1] Han. V. 47, 1912, PP. 1571-1658; V. 49, 1912, PP. 29-68.
[2] Han. V. 49, 1912, P. 31.
[3] Han. V. 47, 1912, PP. 1599-1604.
[4] Han. V. 47, 1912, P. 1638; see also the speech of Mr. Asquith then Prime Minister in the House of Lords, V. 49, PP. 29-33.
[5] Han. V. 47, 1912, P. 1622; PP. 1573-1574.
[6] Han. 1913, V. 49, P. 931.
[7] 2 & 3 Geo. 5, C. 29.

or charge as justified, if the railway companies proved to the satisfaction of the Commission:[1]-

(a) That there had been a rise in the cost of working the railway.[2]

(b) That the whole of the particular increase of rates of which complaint was made, was part of an increase of rates made for the purpose of meeting the said rise in the cost of working.

(c) That the increase of rates made for the purpose of meeting the said rise in the cost of working was not, in the whole, greater than was reasonably required for the purpose.

(d) That the proportion of the increase of rates alloceted to the particular traffic with respect to which the complaint was made was not unreasonable.

It is hard to say precisely at the present moment what effect the Act of 1913 will bear on the construction of the first section of the Railway and Canal Traffic Act, 1894. There has been no case decided or heard under the Act. The words "a rise in the cost of working the railway" might be interpreted widely as to enable the Commission to justify an increase on a broader basis than that before 1913. The Railway and Canal Traffic Act, 1913, might thus be used to restore the elasticity in rate-making by the railway companies. But as no case has been decided under the Act, it is premature to say anything definitely.

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[1] Act, Section 1.

[2] The rise in the cost of working the railway cannot include the cost of carrying and dealing with passengers, resulting from improvements made by the company since Aug. 19, 1911 in the conditions of employment of their labor or clerical staff.

After the passing of the Railway and Canal Traffic Act, 1913, no bill had been passed into law for the regulation of railway rates in England. Several attempts were made to introduce bills into Parliament, but there had been no result.

A few months after the passing of the Bill, Mr. Bathurst moved to appoint a Select Committee of the two Houses of Parliament to inquire into the whole question of railway rates with a view to re-classification and general revision but it was rejected as Mr. Buxton stated, "it would not lead to useful results."[1] In answering a proposal to make an inquiry into the working of the Railway and Canal Traffic Act, 1913, it was said that this would be altogether premature, for there was no case in which it had been sought to justify an increase of rates under the Act.[2]

On April 21, 1914 a Bill "to make better provision for carrying into effect the Railway and Canal Traffic Acts, 1854 to 1913" was presented by Mr. Barnston.[3] The Bill was divided into 8 clauses; its purpose was to give the Board of Agriculture the power to hear complaints as to agricultural traffic and to settle amicably the differences.[4] The Bill was proposed to be read the second time on April 29, 1914 but it was not read.

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1. Han. V. 56, 1913, P. 24.
2. Han. V. 56, 1913, P. 21.
3. Han. 1914, V. 61, P. 776; British Parliamentary Papers, 1914, V. 6, Bill 194.
4. In 1906 the question of preferential treatment on agricultural produce was already vexatious. See Report of the Departmental Committee appointed by the Board of Agriculture and Fisheries on Preferential Treatment, 1906 (Cd 2959).

Analysis of the Decisions of the Railway and Canal Commission bearing upon the Increase of Rates.[1]

1894-1914.

The Railway and Canal Traffic Act, 1894, experienced some difficulty in its interpretation. Some contended that its application was limited, that the Act was simply a special enactment to meet the special evil created by the general raising of rates on the part of the railway companies from January 1, 1893, and that its object was to throw upon the railway companies the onus of justifying the increase of those rates which were raised over the rates in existence on December 31, 1892.[2]

The Commission held this interpretation in the case of the North Staffordshire Colliery Owners' Association. If this interpretation was right, section 1 of the Railway and Canal Traffic Act would not apply to any increase (a) in a new rate which was not on a rate-book on 31st December, 1892, or (b) in a rate which had been further increased beyond a point already justified by the Commission since that date. The interpretation involved a

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[1] A large number of complaints on increase of rates under section 1 of the Railway and Canal Traffic Act, 1894, were withdrawn or settled before the hearing. Of the twenty-seven cases actually heard before Jan. 30, 1913, by the Railway&Canal Commission, sixteen were in favor of the railway companies and six against them and in five cases the judgment was partly for the companies and partly for the complainants: - Han. V. 47, 1912-1913, P. 1528. Of the twenty-seven cases, only twelve were reported in the Railway and Canal Traffic Cases. See Vols. 7-12. After January 30 1913, the cases heard were as follows:
1903-1906 Two cases, both in favor of railway companies.
1906-1909 Three cases, two in favor of and one against the railway companies; 1909-1911, three cases, two in favor of and one against railway companies; 1911-1914, four cases, two against and one in favor of railway companies, and one partly so.
See Railway and Canal Traffic Cases, Vols. 12-15.

[2] North Staffordshire Colliery Owners' Association, etc., 78.

question of the most serious kind on the construction of the first section of the Railway and Canal Traffic Act, 1894, "whether it means that rates cannot be raised without justification, as compared simply with the level at which they stood at the end of 1892, or whether the necessity for justification applies also to the re-raising of rates which have been lowered since 1892, but reraised to a point not exceeding the level of 1892."[1] The question was barely mentioned in the case of the Millom and Askam Hematite Iron Company, 1903, by Justice Wright.

It was only in the case of the North Staffordshire Colliery Owners' Association, 1907, that the question was definitely settled by the overruling of the Court of Appeal. On August 1, 1900, the North Staffordshire Railway Company and others raised the rates charged on coal and coke from the North Staffordshire Collieries to Ellesmere Port and to Birkenhead in force on July 31. The rates in question had, in November, 1895, along with others, been reduced, but on August 1, 1900, all were increased to the amounts in force on December 31, 1892. In 1904 the other rates were again reduced, but those to Ellesmere Port, and Birkenhead were retained at its 1892 level. The reason for the railway companies to do so was that in 1895, the coal trade was in a depressed state, but in 1900, the trade was in a prosperous condition. The North Staffordshire Colliery Owners' Association complained to the Railway and Canal Commission that the increased rates were unreasonable.

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1. Millom and Askam Hematite Co., Ltd. v. Furmers Ry. Co., North Eastern Ry. Co., and London & North Western Ry. Co., 1903; 12 Ry. & Canal Traffic Cases, 8.

The railway companies stated that the rate complained of was no higher than the rate in force on Dec. 31, 1892. Since the passing of the Act of 1894, the rate was once lowered and the present increase was up to the level at which it stood on Dec. 31, 1892, The railway companies did not admit that there had been any increase within the meaning of Section 1 of the Railway and Canal Traffic Act, 1894. The railway companies pointed out that if they could not make such increase without justification of reasonableness, the effect would be to prevent them from ever lowering their rates. The Commission held that the sole object of the Railway and Canal Traffic Act, 1894, was "to throw upon the railway company the onus of justifying any increase of the rate over the amount charged on the 31st of December,[1] 1892." The railway companies could raise their rates to the 1892 level without justification of their reasonableness.

The Court of Appeal overruled this decision and held that no sufficient ground could be discovered for holding that the remedy provided was limited to those rates which were incurred by those railway companies in January, 1893, or that the standard of 1892 was a limit up to which those companies might, at any later date, raise rates without control. The Court of Appeal held that Section 1 appled to every incrase.[2] The legislature intended not merely to provide a remedy for the mischief actually wrought in January, 1893, but also to intordouce a check

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[1] North Staffordshire Colliery Owners' Association v. North Staffordshire Ry. Co., London & North Western Ry. Co.; Great Western Ry. Co., and Shropshire Union Rys. and Canal Co., 1907, 1908; 13 Ry. & Canal Traffic Cases, P. 82.
[2] North Staffordshire Colliery Owners' Association, etc., 78.

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upon future increase of actural rates by throwing upon the railway companies the onus of showing that such increases were reasonable; in short, the act deals with two types of cases, viz., increases in the past and increases in the future.

It was contended that the rates referred to in section 1 were the rates existing on the last day of December, 1892, this date being specially mentioned in the Act. The Court of Appeal held that the specification of this date did not make the Act limited in the enactment.[1] In such legislation, some point of time must be fixed as the initial date in order to make the Act to a certain extent retrospective,[2] unless traders were to be allowed to challenge everything that had been done since railways had been first started.[3] The legislation made the newly devised check upon the power of the railway companies become operative simply as from the end of December, 1892. In the case of rates raised after the date mentioned, the law simply removed the presumption therefore existing that rates below the maxima for their class was reasonable, and threw upon the railway companies the responsibility of showing that the increase was reasonable.[4]

Reasonableness. The Railway and Canal Traffic Act, 1894, required a railway company to justify each separate increase of

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[1] North Staffordshire Colliery Owners' Association, etc., 78.
[2] The Act was retrospective in the sense that it could be made to apply not only to increases after the 25th.of August, 1894, (the date the Act was passed), but also to increases between the 31st. of December, 1892 (Jan. 1, 1893, was the date) of the general increase) and that date. This was assigned by the Court of Appeal as a sufficient reason to account for the mention of the date in the Act.
[3] North Staffordshire Colliery Owners' Association, etc., 78.
[4] Rickett, Smith & Co. etc., 107, 111.

rate, whenever challenged. The law did not specify the manner, nor state the method of justifying an increase. It might be open to the railway companies to show that the previous reduction had been found too great or that it was made under circumstances which no longer existed.[1] The railway company did not, however, discharge the onus of proof by simply showing that the increased rate was within the maximum. It must satisfy the Railway and Canal Commission that the increase was reasonable.[2]

What is reasonable? Reasonableness in a particular case was held to depend on a group of particular circumstances. Reasonableness would involvea consideration of circumstances and events of previous years before the increase was made.[3] The reasonableness of an increase must be measured by reference "to the service rendered and the benefit received."[4] In the Rickett case, increased cost of working was held as an element in determining the question of reasonableness.[5] In the exparte Great Southern and Western Railway Company case, the Commission held that the increase in the expenses of performing the service would be a main factor in judging the reasonableness of an increase.[6]

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1. North Staffordshire Colliery Owners' Association, etc., 78, 95.
2. Ex Parte Great Southern and Western Ry. Co., 1914; 15 Ry. & Canal Traffic Cases, 282, 291.
   Smith and Forest v. L. & N. W. Ry. Co. etc., 1889, 1900; 11 Ry. & Canal Traffic Cases, 156.
3. North Staffordshire Colliery Owners' Association, etc., 78, 110.
   Ex Parte Great Southern and Western Ry. Co. etc., 282, 298.
4. Rickett & Smith & Co. etc., 113.
   Smith and Forest, etc., 156, 161.
5. North Staffordshire Colliery Owners' Association, etc., 78,118.
6. Ex Parte Great Southern & Western Ry. Co., 282, 291.

The difficult question was by what standard the question of reasonableness could be decided. The standard of reasonableness could not, of course, be measured by the affluence or indigence of the carriers; nor was reasonableness to be decided by its effect upon the trade of the persons who had to pay the rate.[1] The mode of proof that was usually resorted to in the Court and approved by the Commission was a comparision of expenditure with receipts. This method was not a proper one and the Commission did not hesitate to confess it. "The principle of ratio is not wholly satisfactory and requires the closest scrutiny and is only considered as prima facie evidence of a rise and is not in itself conclusive. It is, on the other hand, difficult to suggest a better method of proof.[2] Some basis or standard of comparison must be set up, whether it be the ratio of expenditure to receipts, the expenditure and receipts per train mile or per ton carried. Of these the first was found to afford the least intricate and deceptive method of instituting the required justification, as it would need only to be shown that there had been no decrease of receipts to establish the fact that the whole of the increase of the ratio of expenditure to receipts had been attributable to increased expenditures.[3] A comparison of expenditures and receipts was held a fair method where no special elements could be proved to exist.[4] In adopting this method the Court

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1. Rickett, Smith & Co. etc., 107, 112.
2. Society of Coal Merchants v. Midland Ry. Co.m 1909; 14 Ry. & Canal Traffic Cases, 100.
3. South Yorkshire Coal Owners' Assurance Society v. Midland Ry. Co., 1897; 10 Ry. & Canal Traffic Cases, 28, 49.
4. Ibid.

recognized that it was impossible to give an absolute figure for the cost of moving a ton of goods.[1]

To justify a permanent increase of rates, changes affecting cost of working only temporarily, would not be sufficient.[2] Causes of a fluctuating and transitory character resulting in increased expense to carriers could not justify permanent increase of rates.[3] In the Ex Parte Great Southern and Western case it was held on the same ground, that the year 1892 which was prior to the amalgamation could not be accepted as a proper year of comparison and that the year succeeding the amalgamation should be adopted unless abnormal too.

Upon a complaint by Smith and Forest, 1899, on certain increases being unreasonable, the railway companies produced elaborate tables and proved to the satisfaction of the Railway and Canal Commission that there was an increase after 1888 in the general cost of working the traffic and that the increase was permanent and progressive.[4] The railway companies further showed that there was no compensatory circumstance to meet the increase in the cost of working the traffic, after taking all the elements of economy into consideration. The Commission granted the railway companies the increase in 1893 to the extent of 3 per cent. In the Society of Coal Merchants case[5] the complaint was that certain indirect increases were unreasonable. The Midland Rail-

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1. Rickett, Smith & Co. etc., 107, 117.
2. Black and Sons v. Caledonian Ry. Co. etc., 1901; 11 Ry. & Canal Traffic Cases, 176.
3. Ex Parte Great Southern and Western Ry. Co., 291.
4. Smith and Forest, etc., 156, 163.
5. Society of Coal Merchants, etc., 100.

way Company charged their rates on the carriage of coal, first on the basis of 21 cwt. to the ton, later in 1891, of 20½ cwt. and finally in 1907 of 20 cwt. to the ton. Upon a complaint that the increase of about 2½ per cent was unreasonable, the Commission held that the railway company justified its increase of rates by showing an increase in the ratio of working expenses to receipts at least equal to the increase in rates and that such increase was due to an increase in the cost of working and not to decrease in receipts. In the Charlow and Sacriston Colliers Co. case[1] the railway company, in proving the increased cost of working, considered four elements: (1) the increased cost for locomotive power, owing chiefly to the shortening of the hours of labor; (2) increased wages; (3) greater number of wagons having been alloted; (4) increased taxes. In the Ex Parte Great Southern and Western Railway Company case,[2] the increase was rejected, for there was a decrease in the percentage of working expenses to receipts with net increase in the train mileage and tonnage receipts as between the year succeeding the amalgamation and the period preceding the application.

The fact that other traders paid higher rates similar traffic would not, in itself, justify an increase on such traffic.[3] If a railway company could show that an increase was made in bona fide

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[1] Charlaw and Sacristan Collieries Co. v. North Eastern Ry. Co., 1896; 9 Ry. & Canal Traffic Cases, 140-146.
[2] Ex Parte Great Southern and Western Ry. Co., 283.
[3] W. T. Beesley & Co., and others v. Midland Ry. Co. etc., 1914; 15 Ry. & Canal Traffic Cases, 306.

obedience to an order of the Court to avoid a preference found undue, by levelling up a rate and it could also show that the levelling down a rate at other similar places to the same standard would risk an annual loss, such increases/would be reasonable and justifiable.[1]

Making a charge for something for which no charge had been made before would not constitute an increase, direct or indirect, of any rate or charge.[2] A rate would be considered as increased[3] if evidence showed that the railway company knew the contents of the parcels consigned and charged a higher class rate in lieu of the lower class rate formerly charged.

The statute required that every rate for the time being charged should be shown in the book or books kept at the station. The question arose in connection with an increase of rates, how should the increased rates be entered in the rate book. Messrs. British Portland Cement Manufacturerd, Ltd., contended that the old rate in the rate book should be erased out and the new rate put in. The Great Eastern Railway Company and others in their "notice of increase of rates," 1914, added simply a separate column at the side of the column of the old rate, showing the sum to be increased in the case of each rate in the new column. Upon complaint the Commission held that since no difficulty or complicated calculations was necessary to afrive at the increased rate,

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[1] Richworth, Ingleby and Lofthouse, Ltd., and others v. N. E. Ry. Co., 1903; 12 Ry. & Canal Traffic Cases, 34.
[2] Manchester and Northern Counties Federation of Coal Traders' Associations v. Lancashire and Yorkshire Ry. Co., 1897; 10 Ry. & Canal Traffic Cases, 127.
[3] W. T. Beesley & Co. etc., 306, 307.

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it was unnecessary to erase every existing rate in the rate book and to substitute the increased rate therein.[1]

Railway companies did not possess the power to increase their rates under the same conditions. Some railway companies could raise their rates at any time, while others could do so only by obtaining first a sanction of the Commission. Both were subjected to the statutory restriction, imposed by the Act of 1894, of being compelled to justify the increase before the Commission, if its reasonableness was challenged. In dealing with the second group of railway companies the Commission was not limited and governed in the exercise of their duty by precisely the same conditions and circumstances as usually followed in adjudicating on complaints under Section 1, Act of 1894.[2] The restrictive provision against any increase of rates without first securing the sanction of the Commission was imposed by Parliament as a condition of amalgamation, in the interest of, and for the protection of the public, who were deprived of the benefits of competition then existing. In sanctioning the amalgamation, Parliament prohibited them from raising their rates without first securing the approval of the Railway and Canal Commission.[3]

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1. British Portland Cement Manufacturers, etc., 213, 215, 216.
2. Ex Parte Great Southern and Western Ry. Co., 299.
3. Ibid 282-305.

CHAPTER XII.

Future Problem of Railway Regulation in England.

The preceding chapters have shown the progress of Parliamentary regulation of railway rates, as manifested in the various railway Acts of the past century. At this stage of our discussion it may be of advantage to relate briefly the attempts made to establish some sort of executive control of railways and the powers delegated by Parliament to the Board of Trade for the regulation of railways in order that we may realize more fully how little actual control of railway rate policy exerted prior to the legislation of 1873-88 and what problem lies in the future regulation of railway rates in England. The powers delegated to the executive government were not specially for the regulation of railway rates. In fact there was none at all. The discussion will show, however, in the first place, the attitude of Parliament towards the regulation of railways in general, and in the second place, whether Parliament was an agency fit for the regulation of railway rates.

The early growth of the railway system in England was so rapid and so extensive that it was soon felt that the problem of railway control was an important and difficult one. The necessity of a special executive department to look after the proper regulation of railways was recognized. The Select Committee of 1839 stated that a supervising authority should be exercised over all arrangements in which the public were interested, and that this control should be placed in the hands of the executive government, perhaps in a Board attached to the Board of Trade of which the

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President and Vice-President should be members, together with two or more engineers of rank and experience.[1] The same conclusions were reached and again recommended by the Select Committee of 1840.[2]

As a consequence of these recommendations Lord Seymoure in 1840 moved for leave to bring in a Bill to establish a Board of Superintendence of Railways in connection with the Board of Trade.[3] The Bill was passed on August 10, 1840, under the title of the Regulation of Railways Act,1840.[4] The Act was soon found to be incomplete. In the first report of the Railway Department, it was stated that the powers given to the Board of Trade by the Act were totally inadequate to enable it to carry into effect the measures of the Act.[5] Mr. Gladstone in 1842, therefore, introduced a Bill for the better regulation of railways.[6] The purpose of the Bill was to enlarge the powers of the Railway Department of the Board of Trade. The Bill was passed on July 30, 1842, and was known as the Regulation of Railways Act, 1842.[7]

The powers which were given to the Railway Department of the Board of Trade under these two Acts had practically nothing to do

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[1] Second Report, 1839, P. XIII; see also Second Report of the Railway Department of the Board of Trade, 1842, P. XVI.
[2] First Report, PP. 3-4; third Report, PP. 4-5, 12; Railway Times, 1840, P. 433.
[3] Han. 1840, V. 54, P. 894.
[4] 3 & 4 Vict. C., 97.
[5] First Report, 1841, P. 11.
[6] Han. 1842, V. LX, P. 165.
[7] 5 & 6 Vict. C. 55.

with the regulation of railway rates.[1] They may be grouped under some four heads.[2]

1. Enforcement of the provisions of railway acts.
2. Revision of the by-laws and regulations of the railway companies.
3. Collection of statistical returns.
4. Inspection of railway construction, equipment, etc., in the interest of public safety.

The power to enforce the provisions of railway acts was actually very limited at this time. In the first place, there were no general regulation acts but only special acts which differed from company to company. The most important parts of those early special acts relating to powers and rights of the public were, as we have previously shown, practically inoperative, since they were enacted on the wrong assumption that railways could be open and free to all as in the case of canals. In the second place, the maximum toll and rate clauses were not effective; they were all fixed too high. The revision of by-laws, rules and regulations was of more importance. There were two kinds of by-laws.[3] The

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[1] The nature of the Acts may be gathered from Mr. Gladstone's objection to attach a clause proposed by Mr. Hanson Hinde to the Bill while in Parliament. This clause dealt with railway charges; it stated that "it may be lawful for any railway company to affix a printed list of rates and tolls in a conspicuous situation within every station, house or other buildings where such rates or tolls are collected instead of affixing a table of rates and tolls painted on boards to the toll house or building." Mr. Gladstone opposed it on the ground that it did not come within the object of the Bill which was solely for public safety: Han. 1842, V. LXIV, P. 173.

[2] See also the <u>Fourth Report, Railway Commission,</u> 1851.

[3] First report of Railway Commission, 1847, P. 15.

first were the by-laws for regulating the conduct of officers and employes of the railway companies and other matters relating to the internal management of the corporation. The second were by-laws regulating the travel upon and the use of the railways. By giving power of approval of by-laws to the Railway Department, uniformity in the by-laws of the various railway companies and hence some further protection of the liberty of those subjected to them could be secured.[1] But even this power was of limited nature, as it was confined to "by-laws, orders, rules and regulations which imposed penalties for the enforcement thereof upon persons other than servants of the company."[2] In a majority of cases no such by-laws or regulations existed. The collection of statistical returns was very important but its effect on the regulation of railway was at the best negative. By far the most important and the most effective of all the powers was the inspection of railway construction, equipment, etc., for public safety. The Railway Department could require a railway company to alter or to make additions to certain structures, if those structures were liable to jeopardize the public safety.

The part of the Acts relating to railway charges was in connection with the collection of statistical returns and simply required each railway company to make up and deliver to the Railway Department tables of all tolls, rates and charges from time

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1. Second Report of Railway Department, 1842, P. XVI. The rules, by-laws and regulations of some railway companies were said to be "in the highest degree vexatious and annoying, if not tyrannical." See Railway Times, 1840, P. 473.
2. First Report of Railway Department, 1841, P. 18.

to time levied on each class of passengers and on cattle and goods conveyed on the railway.[1] This requirement was simply for information and not to afford a basis for positive regulation.[2]

The power of control over railways as given to the Railway Department of the Board of Trade by the Regulation of Railways Acts of 1840 and 1842 was limited in scope. The powers were dealing with only one phase of the railway problem. Other problems of more significance and involving wide interests, the matter of excessive charges and inadequate facilities, were pressing for solution. Mr. Gladstone in his reports of 1844 emphasized the point that regulation of railways should be made from the point of national interest[3]. The Railway Department should be given more power and made more independent of Parliament. On the 19th of July, 1844, he procured authority to re-organize the Railway Department.[4] He obtained also a standing order of the House requiring that all those documents relating to railway bills which Parliament required for its information should be deposited with the Railway Department of the Board of Trade.[5] A separate railway board was established on August 6, 1844 with Lord Dalhousie as its head.

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[1] See also 1st. Report, Railway Department, 1841, P. 11.
[2] The nature of the Railway Department can be seen from the following instance. In 1841 an attempt was made to invest the Railway Department of the Board of Trade, with a discretionary power of issuing regulations for the prevention of accidents upon railways. The Select Committee which was appointed to consider it recommended that the Board of Trade should not have the discretionary power and that their supervision should be exercised in the way of suggestion rather than in that of positive regulation." - Report Select Committee on Railways, 1841, PP. III, V and VI.
[3] Fifth Report, 1844, P. X, XV.
[4] Han. 1845, V. 77, P. 351; Railways and the Board of Trade, 1845.
[5] Parliamentary Papers, 1845, V. XXXIX (479) Minutes of the Lords of the Committee of Privy Council for Trade; Han. 1845, V. 77, P. 256.

Its life was but short, however, as it came to an end on July 10, 1845, when all the business relating to the control of railways was again thrown in with the ordinary business of the Board of Trade.

The chief duty of the new board was to report to Parliament upon new railway schemes and bills with reference to their positive and comparative advantages to the public, and especially with reference to questions of extension, amalgamation and competition; it still had nothing to do with the regulation of railway rates. A series of reports upon the merits of the railway schemes of 1845 was presented to Parliament for the special purpose of furnishing guidance to the Private Bill Committee of the House. In making these reports, the Board did not hold their proceedings in open court and the discussions presented by it in their reports were strongly objected to. The public were infuriated at what they considered the secrecy of the Board - its publications of summary decisions without giving reasons for them. Sir Robert Peel, in Parliament,ignored the Board and its reports.[1] He declared that the government intended to leave the railway bills as before to the judgment of the Private Bill Committee. When the special Railway board was abolished, the function of reporting on the actual or comparative merits of railway schemes was left to the Board of Trade as previously constituted and if it saw fit, the Board could make special reports on various questions.[2] The chief reason

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[1] Han. 1845, V. 77, PP. 271, 279, 285; see also Han. 1845, V. 77 P. 138, 152, 170, 185.

[2] Joint Committee, 1872, V. 13, P. VII.

for the fall of the new board, outside of the inadequacy of its powers, was its lack of support from Parliament. So far from asking the House to work in harmony with the board, Sir Robert Peel said that every railway scheme must be re-discussed - practically setting aside the work of the board. The failure of the Dalhousie Board as explained by the Select Committee of 1846, was not due to any incompetence on its part, but simply to the faulty system pursued by it in receiving evidence in private and to lack of support on the part of the government.[1]

Dalhousie Board was abolished, but the pressing need for an executive board in the regulation of the railways became more and more urgent. Such regulation could not be efficiently discharged by a few members possessing, perhaps, little knowledge and no experience of railway business. Parliamentary acts might be drawn with great care but those acts could not control railways under all circumstances and could not protect the public adequately and completely. The Select Committee of 1846 saw this need and recommended very strongly the establishment of another board.[2] In its opinion this new board should possess not only power to consider all railway bills but also power to regulate rates, to protect the public from excessive exactions and to take due advantage of every suitable opportunity for obtaining a reduction of charges and also uniformity of rates and classifications.[3]

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[1] Second Report from the Select Committee on Railway Acts Enactments, 1846, P. XIX.
[2] Second Report, Select Committee on Railway Acts Enactments. 1846. PP. XIX - XXII.
[3] Second Report, Select Committee on Railway Acts Enactments, 1846, P. XIX.

After the report was made by the Select Committee, both Houses passed resolutions urging the appointment of a railway board. The Chancellor of the Exchequer moved on August 19, 1846, for leave to introduce a Bill to that effect.[1] The chief topic for discussion in connection with the Bill was the granting of greater power to the board than that which was already granted to the Railway Department of the Board of Trade. It was originally intended that its powers should be extended along the line of the recommendations of the Select Committee of 1846. As the session was drawing to its close, the Bill was passed on August 27, 1846, without granting the Board any new power, but with the understanding that additional powers would be granted in the following session. This Act - Act for Constituting Commissioners of Railways[2] authorized the appointment of not more than five Commissioners of Railways including a president who was to have a salary of Ƚ2000 a year. The two paid members were to receive Ƚ1500 a year each. The new Commission came into office on Nov. 9, 1846 with the Right Hon. Edward Strutt as its President. Its chief duties were not to regulate railway rates but simply to report as before on special cases referred to them and also upon private bills and especially on competing schemes and on amalgamation.

In accordance with the original intention of granting more powers to the Railway Commission, a bill to that effect was introduced into the House of Commons early in the session of

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[1] Han. 1846, V. 88, P. 89.
[2] 9 and 10 Vict. C. 105.

1847.[1] It is interesting to note that the powers asked for in this bill were much larger than those outlined in the first report, especially those regarding the regulation on the increase of rates. The bill proposed that the Commission should have the following powers:-

1. To regulate future applications to Parliament for new lines.

2. To examine into the compliance with the Standing Orders of Parliament.

3. To call for returns of tolls and charges actually levied by railway companies. Railway companies were to publish at the stations either the whole of their tolls and charges or such portions of them as the Commissioners might direct. The companies were not to raise these tolls and charges without 15 days' notice and were to report annually to Parliament.

4. To settle disputes.

The Bill[1] went no further than its second reading.[2] After the Bill failed to pass, the idea as to the necessary powers for discharging the duties underwent a considerable modification. The powers regarding railway bills recommended by the Select Committee of 1846 to the new board would be inconsistent, stated the first report of the Commissioners, with the existing legislative policy.[1] They would be regarded as a serious and objectionable

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[1] The Bill met two classes of objection in Parliament, some complained that the provision did not go far enough in the way of regulation, while others condemned them as improper interference with private affairs. First Report, Railway Commission, 1848, P. 52; see also Report, Royal Commission, 1867, P. 16.

[2] First Report of Railway Commission, 1848, P. 47.

[3] First Report of Railway Commission, 1848, PP. 47-49.

interference with the functions of the legislature. The proper duty of the administrative department of the government, as conceived by the Railway Commissioners, was rather to advise and assist than to supersede the deliberations of Parliament. As to the additional power for the supervision of existing railways, the report was very careful to point out that they were not intended to go further than inquiry, report and publicity.[1] It recommended, therefore, that a new bill should provide for the following objects:[2]

1. For instituting preliminary proceedings with respect to railway bills.

2. For amending the existing statutes with reference to the opening of railways, by-laws, cheap trains and continuous railways.

3. For enabling the Commissioners of Railways to obtain full information on all matters connected with the working of the railway system and to report their opinions thereupon to Parliament.

The Bill was never introduced.[3]

In the meantime the Right Hon. Edward Strutt was superseded as President of the Commission by the Right Hon. Labouchere, then President of the Board of Trade. The latter naturally brought the Commission and the Board of Trade into touch with each other and facilitated the resumption by the Board of its railway duties. At first, it was only partially reunited to the latter but under

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[1] First Report of Railway Commission, 1848, PP. 49-54.
[2] Ibid, P. 54.
[3] First Report of Railway Commission which was published on March 31, 1848, was signed by Edward Strutt, Lord Granville and Edward Ryan, but the second report which was published on May 1, 1849, was signed by H. Labouchere, Lord Granville and Edward Ryan.

the Board of Trade (Railway Act), 1851,[1] it ceased altogether to exist as a separate department. The power and the work of the Railway Commission was transferred by the Act to the Board of Trade.

The work of the Commission was not to regulate railway rates but to make reports to Parliament. Four reports were made from 1848 to 1851. These reports were more or less along the same lines as those of the Railway Department of the Board of Trade from 1840 to 1846. It was only in the third and fourth reports that the question of the regulation of railway rates was somewhat touched upon.[2] For an illustration, on February 19 and March 13, 1850, orders were passed in the House of Commons, directing the Railway Commission to report their opinion on any railway Bills introduced during the session in which it was proposed to raise or alter the rates and tolls authorized to be taken under previously existing Acts of Parliament. In the fourth report, 1851, the question was first analyzed by the Commission through its maximum rate clauses, and then how far competition was effective and how far ineffective in controlling rates, was considered. Conclusion was reached only by taking into account all the peculiar circumstances of each line.

Various reasons have been given for the fall of the Railway Commission of 1846. Mr. Hadley, in his famous book on railway transportation says that Dalhousie's Board died of too much work and too little pay; the Railway Commission died of too much pay

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1. 14 and 15 Vict. C. 64.
2. Fourth Report of Railway Commission, 1851, PP. XIX-XXIV.

and too little work.[1] To say that the Commission had too little to do is not fair to them, for their reports showed the contrary. Again it has been said that the railway mania which was about over when the Commission began its work,first gave rise to the demand for the establishment of such a Commission,and thereby its collapse largely destroyed the need for it,after it had been established.[2] If this was a reason for its fall, it was not the primary one, for we know that in the latter part of the forties and the early part of the fifties, the railway problem was just beginning to be realized and Parliament was seeking for a solution. As regards certain lines of its work, the need for the Railway Commission may be questioned, perhaps, but if Parliament had really wished to have a fair trial of the supervision of railways by an executive department of government, the Railway Commission could have been made of great service. Parliament showed no such desire. The fall of the Railway Commission must be attributed, therefore, to the jealousy of Parliament. It has been truly said that it was "difficult to please the House on questions of railway legislation; the House was always disposed to quarrel with what existed, to demand a change and then to quarrel with the alteration."[3] Parliament was keenly alert to gaurd against any encroachment upon its own power. The work of the Railway Commission in respect of railway bills naturally came into clash, to some extent at least with the power of the Private Bill Committee.[4] The fact that

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[1] Hadley: Railroad Transportation, Ch. 9.
[2] Cleveland-Stevens, English Railways, their Development and their Relation with the State, P. 153.
[3] Han., 1848, P. 1080; Cleveland-Stevens: English Railways, P. 149.
[4] See <u>Cleveland-Stevens: English Railways,</u> 153.

Parliament refused to grant the Railway Commission new power intimated that Parliament was of the opinion that railway regulation belonged only to its own proper function.[1]

After the fall of the Railway Commission no attempts were made either by or in Parliament to establish a separate and independent executive department for the general regulation of railways. The previous analysis shows that Parliament refused on different occasions to grant to any executive department adequate power for the positive regulation of railways. Of the powers delegated, aside from the question of undue preference and the like, the regulation of railway rates has not been included. Parliament persisted in the regulation of railway rates only through the various acts.

It may now be asked whether the problem of rate regulation in England can be regarded as solved. It will be easier to answer this question, if we consider the general result of the Parliamentary legislation as secured through the various Acts. Parliamentary regulation of railway rates in England resulted in the establishment of three checks upon railway rate-making. First, rates and charges must be within the statutory maxima; second, rates and charges must be such as not to constitute an undue preference; and third, no increase of rates and charges may take place, unless increase in the cost of service is proved.

The three checks have not been fully satisfactory in actual practice. Each had its inherent defect. The first check up to the time of 1891-92 when the revision of classifications of mer-

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[1] See also Railway Times, August 22, 1846, PP. 1165.

chandise traffic and schedules of maximum rates was carried out, was but nominal. The old classifications were too crude to possess working value and the maximum rates were all fixed too high. After the revision in 1891-92, the classifications and schedules left little room for adjustments of actual rates according to circumstances and traffic requirements. The second check was of some use to the public against undue preference. But, the prohibition of undue preference is still as vague and uncertain now as it was when first incorporated in the Railway and Canal Traffic Act, 1854. Even when the law against undue preference is fully and efficiently enforced, it touches only a part of the problem of rate regulation. Besides, there is the unsettled question of preferential rates for foreign merchandise, which may differ in nature from the question of differential rates, but is of no less importance to the welfare of the nation. The third check may be regarded as a necessary consequence of the first two. It has its utility but it is conducive to inelasticity in rate-making. A railway company will not reduce rates very readily, if it knows that future increases will need justification. Parliamentary legislation in the form of these three checks cannot be considered as a great success, the problem of rate regulation is still to a large extent unsolved.[1]

Prior to 1888, regulation of railway rates was less restrictive, so the problem was less acute. With the passing of the Railway and Canal Traffic Act of 1888, the power of the railway company to determine its charges was largely curtailed and the difficulty of rate regulation was also increasing. The diffi-

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[1] See also Fortnightly, 1881, PP. 432-440; Westminister, 1902, V. 158, PP. 258-273.

culty was due, perhaps, to a change in the railway situation, an era of construction merging into an era of administration, a change from a dynamic to a static state. But there is no doubt that the problem was made more acute by the strict regulation of 1888. From 1888 to 1894 there was a continuous battle between the shippers and the railway company regarding the revision of schedules and classifications. After 1894, increase of rates exercised public attention. Since 1906 railway companies had to face organized labor in the form of increased wages.

Such is the brief survey of the struggle between the railway company and the public since 1888. There is little promise that the struggle will not be renewed, unless this is changed by the war that is now going on in Europe. Wide dissatisfaction is still felt everywhere.[1] The public is not satisfied because it is inclined to think that the English railway charges are unduly high. Railway companies are not satisfied because they can level down rates without leave but have to get leave to put them up again. Experience of rate regulation in England points to the conclusion that the legislature has not discovered a complete solution of the problem of regulation of railway rates. Such a high authority as Justice Moulton admitted that "the remedy proposed by the legislature (referring to the Act of 1894) is an imperfect one and is not of itself sufficient to secure that the rate charged shall in all cases be reasonable. The failure is due chiefly to the almost insuperable difficulty of effectively regulating railway rates by legislation."[2] It was repeatedly pointed out by the

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1. Westminister, V. 158, P. 258.
2. North Staffordshire Colliery Owners' Association, etc., 78, 95.

various Select Committee that the railway system was so complicated that no enactments could provide for all contingencies. No legislation can secure elasticity in rate-making..Furthermore, Parliament has never settled upon any definite railway policy in so far as this may be said to be the case with regard to its persistent effort to maintain competition. It has shown a marked inability and a stubborn resistance to legislate on broad and permanent lines. Parliament has been particularly unfit for the regulation of railway rates.

In October, 1913, one year before the war broke out, a Royal Commission on Railways was appointed with the Earl of Loreburn as chairman "to inquire into the relationship between the railway companies of Great Britain and the state in respect of matters other than safety of working and conditions of employment and to report what changes, if any, are desirable in that relationship."[1] The Commission received many representations from individuals as well as from associations with regard to rates and facilities or accomodations provided by, or expected from railway companies. Before it could report, the war broke out. What will be done with the railways after the war is interesting to speculate upon. That something must be done is clear both from the railway situation which we have described, with its unsatisfactory results in rate regulation[2], and from the greater demand that will surely develop after the war upon the transportation system for assistance in the work of national reconstruction. Of course it is impossible for us to say precisely what specific method will be

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1. Railway News, Nov. 11, 1916, P. 567.
2. Westminister, 1900, V. 153, PP. 167-182.

best for England to adopt in order to solve her railway problems completely and finally. But in general, there are two alternative policies which have been suggested and which may be used as means out of the difficulty that has arisen in the regulation of railway rates. The first is the complete nationalization of all railways, the state to purchase and operate them. The second is to increase general state control through the agency of a special executive department, leaving railways as they are, in private hands.[1]

The question as to the desirability of the acquisition and management of the railways by the state has been widely discussed ever since the beginning of railways.[2] Whenever the railway problem has been found hard to handle, railway nationalization has been suggested as a way out of the difficulty.[3] Railway nationalization has not been provided by any special Parliamentary Act except in the Act of 1844 which dealt with State purchase of railways as an option to the periodic revision of rates. The Act provided that at the end of twenty-one years new lines would be liable to be purchased by the government for a sum equal to twenty-five years' purchase of the average of the annual divisible profits for three years before such purchase. As a practicable method of nationalization, the chief defect of this Act was that it excluded all the railways sanctioned before the session of

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[1] See also the articles published by the Royal Economic Society; 1911.

[2] Quarterly Review, 1844, V. 74. P. 227-271; Blackwood, 1845, V. 58, P. 633-649; Edinburgh Review, 1846, V. 84, P. 526; Journal of Statistical Society, 1873, V. 36, P. 177-256; Report, Royal Commission, 1865; Report, Select Committee, 1872.

[3] See also Fortnightly, 1886, V. 45, PP. 737-771; Westminister, 1875, V. 103, PP. 20-49.

1844--that is to say about 2,300 miles of railway, which was specially stated in the Act. The main trunk line system of the country excluding the Great Northern Railway was thus outside the Act and could not be purchased except by agreement. Those railways which were constructed before 1844 no longer exist as independent railways,having been amalgamated with other railways constructed at a later period, forming the various trunk lines.[1] Government purchase was urged chiefly for two reasons; first, for the sake of its direct financial advantages and second, as affording means of introducing an improved system of management in the form of lower charges and better facilities. Both were examined in detail by the Royal Commission on Railways of 1867, but the advantages

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1. Other reasons as to the impracticability of State purchase may be worth while to point out.

"By another section of this Act, the second, the Lords of the Treasury are empowered, after the expiration of twenty-five years, to purchase the railways, whatever the rate of divisible profits may be, upon giving three calendar months' notice in writing of their intention, on payment of a sum equal to twenty-five years' purchase of these profits, estimated on the average of the three preceding years.

"This power to purchase on such extravagant terms and such limitations, held out small hopes of relief; so that, upon the whole, the position of the public with regard to railways, was not thereby materially improved." Second Report, Select Committee on Railway Acts Enactment, 1846, P. VII.

The purchase of the 2,300 miles was was subject to the Act of 1844, "which would be absolutely necessary to carry out the scheme, could only take place with the consent of the proprietors and this could only be obtained by the offer of liberal terms."

"As the government would have to enter the market to borrow 400 or 500 million pounds to carry out the operation, the terms upon which this could be raised would in all probability be materially affected." The total capital paid up in 1912 was Ŀ1,334,-963, 518 as against Ŀ529,908,673 in 1870:-Report Royal Commission, 1867. PP. XXXIV-XXXV; Railway Returns, 1870 and 1912.

alleged were found most illusory.[1]

In 1912, after the railway strike, Mr. Ramsay Macdonald proposed nationalization of railways in a proposed amendment to the King's speech.[2] The amendment received due consideration in Parliament but the financial difficulty was carefully pointed out. The capital invested in railways was about 1,300 million pounds, nearly twice the amount of the funded national debt, and it would be suicidal, it was urged, to attempt to raise such a sum with consols at the price they were and railway returns averaging only about 3¾ per cent.[3]

On April 30, 1914, a Bill "to provide for the nationalization of railways, the establishment of a Ministry of Posts and Railways, and for the purposes connected therewith" was presented to the

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1. Report, Royal Commission (3844), 1867, PP. XXXIV-XXXVI; Sir Rowland Hill, one of the Commissioners, differed from the majority, favoring government purchase. See his special report, 1867, PP. CXII-CXXIV.
2. The amendment was the following:- "But humbly represent to Your Majesty that this House regrets Your Majesty's Gracious Speech contains no specific mention of legislation securing a minimum living wage and for preventing a continuance of such unequal divisions of the fruits of industry by the nationalization of railways, mines and other monopolies":- Han. 1912, V. 34, P. 44.
3. Han. 1912, V. 34, P. 65.

House of Commons by Mr. Chiozza Money.[1] The Bill was proposed to be read a second time on May 18, 1914, but it was not read.

Thus we see that nationalization of railways has been agitated for a long time and in different periods as a means of the solution of railway problems arising chiefly out of the regulation

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[1] Han. 1914, V. 61, P. 1887; Parliamentary Papers, 1914, V. 5. Bill 212:- The Bill was divided into fourteen clauses; clauses 1 and 2 were for the creation of a Minister for Posts and Railways; clauses, 3, 4 and 13 provided for the State acquisition of Railways; clauses 5 to 12 dealt with the practical control and management of the State Railways. The minister of Posts and Railways was to have the powers of the Post masters-general as well as control of the State railway system. He was to have the power of giving three months' notice to the owners of any railway of his intention to purchase. The purchase price of any railway would be twenty times the average annual profits, of the three years preceding the date of purchase, as determined by the Board of Trade in its annual returns relating to the railways of the United Kingdom. For the purchase of railways, the Treasury would create a new capital stock (to be called "guaranteed three and a quarter per centum State railway stock"). The stock would be redeemable at the rate of one hundred pounds sterling for every one hundred pounds of stock by annual drawings, commencing within three years of the issue of the stock, by means of a sinking fund of one-half of one per cent or such sum as might be sufficient to redeem the entire loans within sixty-three years. The business of operating and maintaining the State railways was to be in charge of a railway Board of four members. Two of the members were to be appointed by the Minister for Posts and Railways, one by the Board of Trade and one by the Treasury. The Minister for Posts and Railways might, if he thought fit, appoint two more members. The Bill proposed to create a Railway Council of twenty-four members one from each county Council, whose area is wholly or partly served by railways owned or operated by the State, each county borough Council whose area is wholly or partly served by railways owned or operated by the State; six from the Associated Chambers of Commerce and Chambers of Trade, six from the Associated Chambers of Agriculture and twelve from the Trade Unions Congress. Their duty was to consider and advise, subject to the approval of the Minister of Posts and Railways, with respect to all questions of general improvements, reductions or increase of charges, wages, the creation and amendment of by-laws and regulations together with questions of general management.

of railway rates. It may be asked whether railway nationalization will solve the railway problem in England. Of course the present problem of regulating railway rates will probably disappear after nationalization; the difficulty of regulating railway rates will appear in another form. But is railway nationalization the best way out of the difficulty for the best interest of the country, taking all things into consideration? It seems to the writer that immediate nationalization of railways is not desirable and may not be practical, mainly for two reasons. And certainly it is not to be to the best interest of the country for at least a good many years to come. In the first place, the great European war has increased enormously the financial burden of England and of the world. The demand for capital will be very large after the war. If nationalization of railways was found impracticable before the war mainly for financial reasons, the same reasons will undoubtedly make it unadvisable for England to attempt nationalization in the near future. In the second place, England will need, to a greater degree than ever before, all the individual initiative and private enterprise that every citizen can render for her reconstruction after the war. The railway system can contribute more to the important work of national reconstruction by leaving it in private hands, with the co-operation of the government, than by the government shouldering the whole responsibility of its management. The supremacy of England was built up upon industrial freedom and individual liberty. Much may be said in favor of railway nationalization in this or the other country but it may not work well in England, with the characteristics of

the English people, such as they are.

The only alternative policy for the solution of the railway problem as it has been suggested by various writers, is to enlarge the sphere of State control. The greatest difficulty in the regulation of railway rates is to devise a proper method that will give railway companies the desirable degree of freedom in revising charges and adjusting facilities along business lines without giving rise to the apprehension that this power might be abused. The utility of a railway rate depends on its dynamic and cosmopolitan nature; its regulation must, therefore, be living, not dead, and dynamic, not static. The regulation must be comprehensive and rates can only be fixed after taking all matters into consideration. The regulation of railway rates should be vested in a machinery possessing the same nature and characteristics, in a body of persons who can comprehend intelligently the changing requirements of traffic and the necessity of rate adjustments. There should be constant supervision over the powers of rate-making but not detailed prescription of hard and fast rules. Every effective effort to regulate railway rates in general will arrest the decline of rates and produce inelasticity in rate-making. Railway companies must necessarily be given large powers to revise their charges; they must be permitted to consolidate or to co-operate more intimately for the purpose of securing greater economy in railway working. But these powers can not be given, unless there is a larger power which can control the actions of the railway company so as to secure the adequate protection of the public. The only way to bring this about is to

constitute a strong executive department with a body of experts in railway business and to grant to this department large and arbitrary powers of positive regulation.

This recommendation for the establishment of a permanent and effective controlling Board is the central feature in almost every report that has been made by the Committees and Commissioners on railways from 1837 to date. The following words of the Select Committee of 1846 on this subject are no less truethen than they were now.[1]

"The system of Railways and Canals is now become so extensive, and their relations amongst themselves are so complicated that no enactments passed by Parliament for their government and regulation can provide for all contingencies, or be perfectly carried into effect, unless by the aid of some more efficient machinery than any which exists at the present moment. After mature consideration your Committee have come to the conclusion that it is absolutely necessary that some Department of the Executive Government, so constituted as to command general respect and confidence, should be charged with the supervision of Railways and Canals with full power to enforce such regulations as may from time to time appear indispensable for the accomodations and general interest to the public."

The constant failure of Parliament to appreciate this recommendation and to act accordingly had made one doubt whether such an executive department with large powers for the regulation of railways will ever be established in England by the sanction of

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1. Second Report, 1846, P. V.

of Parliament. Yet already, the present war has made the constitution of such an executive department much easier to realize, for much valuable knowledge which has been acquired by the government in the co-operative operation and management of railways during the war can no doubt be used to guide the future policy of

state control in railways.[1]

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[1] At the outbreak of the war most of the railways were taken over by the government under the Regulations of the Forces Act, 1871.[a] By the order in Council of August 4, 1914, the control was exercised through an Executive Committee composed of government representatives and of general managers of railway companies,[b] The compensation agreed upon in September, 1914, was the sum by which the aggregate net receipts for the period during which the government were in possession of them fell short of aggregate net receipts for the corresponding half of 1914 were less than the net receipts for the first half of 1913, the sum payable was to be reduced in the same proportion. This sum, together with the net receipts of the railway companies taken over, is to be distributed among those companies in proportion to the net receipts of each company during the period with which compensation is made.

Extensive power was given to the Railway Executive Committee and the Board of Trade. They possess power to reduce facilities and to increase charges. A recent Order in Council[c] will illustrate the extent of power conferred.

"7B- (1). The Board of Trade may, for the purpose of making the most efficient use of railway plant or labor, with a view to the successful prosecution of the war make orders for all or any of the following purposes, namely:-

(a) for enabling the Board of Trade to take possession of any private owner's wagons and house those wagons in such manner as they think best in the interest of the country as a whole, on such conditions as to payment, use, and otherwise as may be provided by the order.

(b) for enforcing the prompt loading or unloading of wagons, by making failure to load or unload in accordance with the order an offense.

(c) for curtailing any statutory requirements as to the running of trains or affording other facilities on certain lines or at certain stations or for requiring the disuse of any such time or stations, in cases where its curtailment or disuse appears to the Board of Trade to be justified by the necessity of the case.

(d) for restricting or prohibiting certain classes of traffic (including the carriage of passengers' luggage) on railways either absolutely or subject to any conditions for which provision is made by the order:-

(e) for modifying any statutory requirements with respect to the maximum amount of passenger fares.

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a. 34 and 35 Vict. C. 86.
b. Railway News, August 9, 1916. P. 241.
c. Ibid, Dec. 16, 1916. P. 703.

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The department might be the enlargement of the Railway Department of the Board of Trade but made independent of the Board. It is the opinion of the writer, however, that it would be better to constitute a new one with large powers of control over railways, canals and postal service and other agencies of communication. The powers of the Railway Department of the Board of Trade can be transferred to this new department. As to the additional powers, it is impossible for the writer to specify without further study made actually in England. The subject is so delicate that it may require a separate inquiry by a special Parliamentary select Committee. But judging from the results of Parliamentary regulation of railway rates, it is the opinion of the writer that adequate power should be given to the new department for the regulation of railway rates. The power may be generic and not specific; it may be along the line for the regulation of through rates. The power of the railway companies in fixing rates must not be interfered. Railway companies should have free power in fixing and revising rates subject to the general supervision of the new department. The new department may be given power to accept or refuse rates purely on commercial and national considerations, after taking into full account both the interests of the shippers and the carriers. Power may also be given to the department to enable it to obtain full knowledge of the working conditions of every railway company. Members of the department should be experts in railway business and should be trained in the national and world knowledge of commerce and industry. The department being armed with such powers and composed of such

members, would probably be in a better position to regulate more intelligently and to protect more efficiently the interests of both the railway company and the public. Whenever any conflict of interest occurred, the department could recommend or decide in a comprehensive way and from the standpoint of the nation a wise policy for a railway company to pursue. Railway companies may be allowed large powers; rates may be permitted to be increased; the right to make differential and preferential rates may be granted; but if they are not in the interests of the public, or some trader or shipper is thereby injured, the department can take action at any time to remedy the situation.

As a further precaution and in the interests of the more efficient protection of the public, the Railway and Canal Commission might be authorized, in addition to the present powers, to decide all complaints of undue charges on broad commercial considerations, and not in any narrow or technical manner. This was actually recommended by the Departmental Committee of 1911[1] but its critics asked "how a law court is to deal with commercial considerations."[2] This criticism may be remedied in two ways. In the first place the law provides already that one of the two lay Commissioners must be of experience in railway business; this requirement might be made to apply to both. In the second place the new department could render direct assistance or information to the Commission, as it would possess full knowledge not only of the working conditions of the railway company but also of the transportation needs of the country.

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[1] Report, 1911, P. 23.
[2] Economist, 1911, P. 1002.

With the large powers of the new department and the additional power of the Railway and Canal Commission, the interest of the public would be properly protected. Railway companies would be left free to revise their charges and to develop their business in whatever manner they thought most advantageous to their own interests and the welfare of the country. Regulation would not be mechanical as in the case of legislative enactment, but dynamic with alert attention to the necessary frequent adjustment of the railway rates to business vivissitudes, without which power no railway company can exist and serve truly the welfare of the public.

Appendix I

(A) Part 1. Goods and Minerals

Great Eastern Railway Company, Midland Railway Company, etc. (Rates and charges) Order Confirmation Act, 1891.[1]

Rates in respect of Merchandise comprised in Classes A,B,C, 1-5.

In respect of merchandise comprised in the under mentioned classes.	Maximum rates for Conveyance			
	For Consignments except as otherwise provided in the schedule.			
	For the first 20 miles or any part of such distance	For the next 30 miles or any part of such distance	For the next 50 miles or any part of such distance	For the remainder of the distance.
	Per ton per mile d	Per ton per mile d	Per ton per mile d	Per ton per mile d.
A	1.15	0.90	0.45	0.40
B	1.40	1.05	0.80	0.55
C	1.80	1.50	1.20	0.70
1	2.20	1.85	1.40	1.00
2	2.65	2.30	1.80	1.50
3	3.10	2.65	2.00	1.80
4	3.60	3.15	2.50	2.20
5	4.30	3.70	3.25	2.50

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[1] Great Eastern Railway Co.; Midland Railway Co., etc. Analysis, 1892, V.70, (CB807) p. 133.

Appendix I - continued.

(B) Part I - Goods and Minerals.

London and Northwestern Railway Company (Rates and Charges) Order Confirmation Act, 1891.[1]

(a) Rates in respect of merchandise comprised in Class A.

Scale I. - Applicable to such portions of the railway as are not herein-after specially mentioned.

Maximum Rates for Conveyance			
For the first 20 miles or any part of such distance	For the next 30 miles, or any part of such distance	For the next 50 miles, or any part of such distance	For the remainder of the Distance
Per ton per mile d	Per ton per mile d	Per ton per mile d	Per ton per mile d.
0.95	0.85	0.50	0.40

Scale II - Applicable to the railways herein specially mentioned.

	Maximum Rates for Conveyance. Per ton per mile d.
Sirhowy	.875
South Staffordshire:	1.25
Dudley to Wichnor, and Branches to Bescot, Dudley Port, Cannock, and Leighwood	
Wednesbury to Tipton and James Bridge	
Norton Branch and Extension	
Littleworth Extension	
Merthyr, Tredegar, and Abergavenny:	
Abergavenny to Nantybwch, Merthyr Extension and Cwm Bargold Branch	
Nantyglo and Blaina	

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[1] Analysis, 1892, V. 70, p. 148-150

Scale II. Continued.

	Maximum Rates for Conveyance Per ton per mile d.
Brynmawr and Blaenavon:	1.25
Brynmawr to Blaenavon and Abersychan Extension	
Whitehaven Junction:	
Whitehaven to Maryport	
Cockermouth and Workington	
The Dawlais and Merthyr Railway, Jointly owned by the company and the Bacon and Merthyr Tydfil Junction Railway Company.	
The Nantybwch and Rhymney Railway jointly owned by the company and the Rhymney Railway Company.	
The Charnwood Forest Railway, worked by the Company.	
South Leicestershire:	
Nuneaton to Wigston	
Mold Junction to Mild and Coed Talon	
Carnarvon to Lauberis	
The Mold and Denbigh Junction Railway worked by the Company.	
Carnarvon Junction to Afonwen Junction	
Nantlle Branch	
Chester and Holyhead	
Bangor and Bethesda	
Stockport Junction to Buxton	2.0
Cromford and High Peak	
Buxton and High Peak Junctions	
Ashbourne and Buxton	
Lancaster and Carlisle, including Ingleton, Morecambe, and Glasson Dock Branches	

Scale III. - Applicable to the Cannock Chase Railway.

For the whole or any portion of the Cannock Chase Railway, the Company may charge a maximum rate of 9d per ton, except with regard to merchandise passing along and from the railway secondly described in and authorised by the Cannock Chase Railway Act, 1860, on to the Littleworth Tramway, and not having passed along any part of the railway firstly described in the said Act, for which merchandise they may charge a maximum rate of 4.50 d per ton.

(b) Rates in respect of merchandise comprised in classes B,C, 1,2,3,4, and 5.

Scale I - Applicable to such portions of the railway as are not herein-after specially mentioned.

In respect of merchandise comprised in the under mentioned classes	Maximum Rates for Conveyance			
	For Consignments except as otherwise provided in the schedule.			
	For the first 20 miles or any part of such distance	For the next 30 miles or any part of such distance	For the next 50 miles or any part of such distance	For the remainder of the distance
	Per ton per mile d	Per ton per mile d	Per ton per mile d	Per ton per mile d
B	1.25	1.0	0.80	0.50
C	1.80	1.50	1.20	0.70
1	2.20	1.85	1.40	1.00
2	2.65	2.30	1.80	1.50
3	3.10	2.65	2.00	1.80
4	3.60	3.15	2.50	2.20
5	4.30	3.70	3.25	2.50

(c) Rates in respect of Merchandise comprised in Class B.

Scale II. - Applicable to the railways herein specially mentioned.

	Maximum rate per ton per mile
	d
Whitehaven Junction Whitehaven to Maryport Cockermouth and Workington	1.50

Appendix I - continued.

(C) Maximum Station and Service Terminals

The following terminals[1] were common to all the Railway Rates and Charges Orders Confirmation Acts of 1891 and 1892 except where special exceptions were made.

In respect of merchandise comprised in the under mentioned classes	Maximum Terminals				
	Station Terminals at each end	Service Terminals			
		Loading	Unloading	Covering	Uncovering
	Per ton s d	Per ton s d	Per ton s d	Per ton s d	Per ton s d
A	0 3	---	---	---	---
B	0 6	---	---	---	---
C	1 0	0 3	0 3	1	1
1	1 6	0 5	0 5	1.50	1.50
2	1 6	0 8	0 8	2	2
3	1 6	1 0	1 0	2	2
4	1 6	1 4	1 4	3	3
5	1 6	1 8	1 8	4	4

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1. Analysis, V 70. 1892 P. 131.

Appendix I - Continued

(D) Special Charges.[1]

The services for which special charges could be made are:-

1. Services rendered by the company at or in connection with sidings not belonging to the company.

2. The collection and delivery of merchandise outside the terminal station.

3. Weighing merchandise.

4. Any services rendered in connection with the detention of wagons or the occupation of any accommodation, before or after conveyance beyond a reasonable period.

5. Loading or unloading, covering or uncovering merchandise comprised in Class A or Class B of the classification.

6. The use of coal drops.

7. Special services on a wharf.

Charges for the use of wagons not included in the maximum rates for conveyance were not to exceed the following sums:

	s.	d.		
For distances not exceeding 20 miles	0	4-½	per	ton.
For distances exceeding 20 miles but not exceeding 50 miles	0	6	"	" .
For distances exceeding 50 miles but not exceeding 75 miles	0	9	"	" .
For distances exceeding 75 miles but not exceeding 150 miles	1	0	"	" .
For distances exceeding 150 miles	1	3	"	" .

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[1] Analysis p. 103-104

Appendix II

Part II - Animals.[1]

The following Scale is common to all the Railway Rates and Charges Orders Confirmation Acts of 1891 and 1892 with the exception of the Scotish Railway Acts and the Irish Railway Acts.

Description.	Rates for Conveyance per mile.				Station terminal at each end.	Service terminal		Minimum total charge per consignment.
	For the first 20 miles or any part of such distance	For the next 30 miles or any part of such distance	for the next 50 miles or any part of such distance	For the remainder of the distance.		Loading	Unloading	
	d	d	d	d	s d	s d	s d	s d
1. For every horse, mule or other beast of draught or burden.	3	3	1.65	1.65	0 6	0 4	0 4	2 6
2. For every ox, cow, bull or head of neat cattle.	2	2	1.30	1.30	0 4	0 3	0 3	2 6
3. For every calf not exceeding 12 months old, pig, sheep, lamb, or other small animal.	0.75	0.75	0.40	0.35	0 2	o1.50	01.50	2 6
4. For every small animal of the several classes above enumerated conveyed in a separate carriage by direction of the consignor, or from necessity.	6	6	6	6	1 6	1 0	1 0	5 0
5. For every truck containing any consignment by the same person of such number of oxen, cows, neat cattle calves, sheep, goats or pigs as may reasonably be carried in a truck 13 ft 6 inches in length inside measurement	6	5	4.90	4.20	1 0	0 6	0 6	5 0
6. Same as No.5 only 15 ft 6 inches in length inside measurement.	7	6	5.20	4.50	1 0	0 9	0 9	50
7. Same as No.5 only 18 ft in length, inside measurement	8	7	6.20	5.50	1 0	1 0	1 0	5 0

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1. Analysis, P. 196.

Appendix III

Part III - Carriages.[1]

This Part of the Maximum Rates and Charges is common to all the Railway Rates and Charges Orders Confirmation Acts of 1891 & 1892.

Description.	Rates for Conveyance per mile.				Station terminal at each end.	Service terminal.			
	For the first 20 miles or any part of such distance.	For the next 30 miles or any part of such distance.	For the next 50 miles or any part of such distance.	For the remainder of the distance.		Loading	Unloading	Covering	Uncovering.
	d	d	d	d	s d	d	d		
For every carriage of what ever description not included in the classification, and not being a carriage adapted and used for travelling on the Railways and not weighing more than one ton, carried or conveyed on a truck or platform.	6	6	3.30	3.20	1 0	6	6	--	--
For every additional quarter of a ton which such carriage may weigh.	2	2	1.35	1.25	- -	-	-	--	--
For the use of a covered carriage, truck for the conveyance of any such carriage	An additional charge of 10 s.								

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[1] Analysis, P. 199.

Appendix IV

Part IV - Exceptional Class.[1]

This Part of the Maximum Rates and Charges is common to all the Railway Rates and Charges Orders Confirmation Acts of 1891 and 1892.

Description	Charges
For articles of unusual length, bulk or weight, or of exceptional bulk in proportion to weight.	Such reasonable sum as the company may think fit in each case.
For articles requiring an exceptional truck or more than one truck, or a special train.	
For locomotives, engines and tenders, and railway vehicles running on their own wheels	
For any wild beast or any large animal not otherwise provided for	
For dangerous goods	
For specie, bullion, or precious stones	
For any accommodation or services provided or rendered by the company within the scope of the undertaking by the desire of a trader and in respect of which no provisions are made by this schedule.	Such reasonable sum as the company may think fit in each case.

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1. Analysis, P. 200. The above provisions would not apply to prices of timber weighing less than four tons each but for all such timber when requiring for two or more wagons for conveyance a minimum charge might be made as for one ton for each wagon used, whether carrying part of the load or used as a safety wagon only.

Appendix V.

Part V. - Perishable Merchandise.[1]

This Part of the Maximum Rates and Charges is common to all the Railway Rates and Charges Orders Confirmations Acts of 1891 and 1892.

Division I.[2]

Description.	Rate for Conveyance.						Station terminal at each end.	Service terminal.	
	For any distance not exceeding 20 miles.	For any distance exceeding 20 miles but not exceeding 50 miles.	For any distance exceeding 50 miles but not exceeding 75 miles.	For any distance exceeding 75 miles but not exceeding 100 miles.	For any distance exceeding 100 miles but not exceeding 150 miles.	For any distance exceeding 150 miles.		Loading.	Unloading.
	Per Imperial gallon d	Per Imperial gallon d	Per Imperial gallon d	Per Imperial gallon d	Per Imperial gallon d	Per Imperial gallon d	Per can d	Per can d	Per can d
Milk	0.50	0.60	0.70	0.90	1.00	1.20	1.50	1.00	1.00
			Returned Empty Cans						
	Per can	per can	Per can	Per can	Per can	Per can			
	1.50	2.00	2.25	2.50	3.00	3.00	---	0.50	o.50

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1. Each railway company was required to afford reasonable facilities for the expeditious conveyance of perishables, any question as to the facilities being decided by the Board of Trade. Where a consignment of milk was less than 12 gallons, the company would be entitled to charge as for 12 gallons, and where a consignment of perishables in Division I and II was less than one hundredweight, the company was entitled to charge as for one hundredweight, with a minimum charge of one shilling.

Part V. - continued.

Division II and III.[1]

Description.	Rate for Conveyance.				Station terminal at each end.	Service terminal.	
	For the first 20 miles or any part of such distance.	For the next 30 miles or any part of such distance.	For the next 50 miles or any part of such distance.	For the remainder of the distance.		Loading	Unloading.
	Per Cwt per mile	Per Cwt per mile	Per Cwt per mile	Per Cwt per mile	Per Cwt	Per Cwt	Per Cwt
Division II. Butter (fresh) Cheese (soft) cream, eggs, fish (Char, Grayling, Lobsters, Mullet red, Oysters, Prawns, Salmon, Soles, Trout, Turbot, White bait) Fruit (Hothouse fruit) Game (dead) Meat (fresh) Poultry (dead) Rabbits (dead) Vegetables (hothouse).	0.60	0.45	0.24	0.10	0.75	0.75	0.75
Division III. -Fish and Fruit, (except as provided in Division II.)	0.40	0.30	0.13	0.12	0.75	0.50	0.50

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1. Analysis, P. 202.

Appendix VI.

Part VI. - Small Parcels by Merchandise Train.[1]

This Part of the Maximum Rates and Charges is Common to all the Railway Rates and Charges Orders Confirmation Acts of 1891 and 1892.[2]

Description.	Authororized Additional charge per Parcel	- - - - -	Per ton	- - -	Per ton.
	s d		s d		s d
For small parcels by merchandise train not exceeding in weight 3 hundredweight. (In addition to the maximum rates for conveyance and the maximum station and service terminals)	0 5	When the Maximum tonnage charge does not exceed	20 0	- -	- -
	0 6	When the Maximum tonnage charge exceeds	20 0	but does not exceed	30 0
	0 7		30 0		40 0
	0 8		40 0		50 0
	0 9		50 0		60 0
	0 10		60 0		70 0
	1 0		70 0		80 0
	1 2		80 0		90 0
	1 4		90 0		100 0
	1 6		100 0		

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1. Any small parcel (other than a parcel of mixed groceries) containing articles belonging to different classes of the classification was to be charged with the maximum conveyance charge applicable to the highest of such classes. When a consignor declined to declare the nature of the contents of the small parcel, the company might charge for the small parcel as if it was wholly composed of articles comprised in class 5 of the classification.

2. Analysis, P. 203.

Appendix VII.

In respect of empties returned by the line of the providing company, the charges including the station and service terminals were not to exceed the following rates:[1]

For any distance not exceeding 25 miles	3 d per cwt.
For any distance exceeding 25 miles but not exceeding 50 miles	4 d " " .
For any distance exceeding 50 miles but not exceeding 100 miles	8 d " " .
For each additional 50 miles or part of 50 miles	3 d " " .

The minimum weight to be 56 pounds with a minimum charge of 3 d.

In the case of returned empty sacks and bags, they were not to be charged more than half the above rates with a minimum charge of 4 d, and in the case of carboys or crates they might be charged double the above rates.

Charges for returned empty fish packages were not to exceed the following rates:

For any distance not exceeding 50 miles	4 d. Per cwt.
For any distance exceeding 50 miles but not exceeding 100 miles	5 d. " " .
For any distance exceeding 100 miles but not exceeding 150 miles	7 d. " " .
For any distance exceeding 150 miles but not exceeding 200 miles	8 d. " " .

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[1] Analysis, P. 102-108.

Appendix VII. - Continued.

For any distance exceeding 200 miles but not exceeding 250 miles	9 d. Per cwt.
For any distance exceeding 250 miles but not exceeding 300 miles	10 d. " " .
For any distance exceeding 300 miles	11 d. " " .

The minimum weight to be 56 pounds with a minimum charge of 4d.

The return of an empty wagon would not be charged provided the companies had the service of conveyance in connection with the use of the wagon.

When merchandise was conveyed for an entire distance which did not exceed from three to six miles, the charges might be made as for three or six miles respectively.

For any quantity of merchandise less than a wagon load, which the company was obliged to carry in one wagon, the company might charge as for a reasonable minimum of wagon load.

A fraction of a quarter of a hundred weight or of a ton might be charged a quarter of each.

A fraction of a quarter of a mile was to be charged as a quarter of a mile.

For a fraction of a penny, the company might demand a penny.

Weight would be determined according to the Imperial avoidupois weight.

Stone was to be charged at actual weight. When the actual weight could not be ascertained, fourteen cubic feet might be charged as one stone.

When timber was consigned by measurement weight, forty cubic feet of oak, mahogany, teak or other like heavy timber, fifty cubic feet of poplar, fir, or other like light timber and sixty-six cubic feet of deals, battens and boards might be charged for as one ton.

Appendix VIII.

1. The following tables illustrate the differences between the proposals of the railway companies, the traders and the Board of Trade in the maximum conveyance rates:

Table I.
Railway Companies Cumulative Scale as being Equivalent of the Normanton Scale

Class	For 1st 20 miles	For next 30 miles	For next 50 miles	For remainder of distance
C	2.40d	1.30d	1.10d	0.40d
1	2.80	1.70	1.60	1.20
2	3.00	2.50	1.80	1.70
3	3.30	2.80	2.40	2.20
4	3.90	3.40	3.00	2.60
5	4.50	4.00	3.30	2.75

Table II
Traders Cumulation Scale

Class	For 1st 20 miles	For next 30 miles	For next 50 miles	For remainder of distance
C	1½d	1¼d	1 d	¾
1	1¾	1½	1¼	1
2	2	1¾	1½	1¼
3	2¼	2	1¾	1½
4	3	2½	2¼	2
5	3½	3	2½	2¼

Table III
Board of Trade Cumulative Scale

Class	For 1st 20 miles	For next 30 miles	For next 50 miles	For remainder of distance
C	1.80d	1.50d	1.20d	0.60d
1	2.20	1.85	1.40	0.90
2	2.65	2.30	1.70	1.35
3	3.10	2.65	1.75	1.65
4	3.60	3.15	2.20	1.80
5	4.30	3.70	3.25	2.30

Provisional Order Bills Report, Part 1, 1891, v. 14. PP LV, LVI.

Appendix IX.

The following tables[1] will illustrate the modifications that took place in the maximum rates as they passed through the Board of Trade and the Joint Committee of the two Houses:

Table I

London and North Western Company's Proposed Maximum Rates, 1889.

Classes	Conveyance Rates per ton per mile				Station Terminals Each End per ton		Service Terminals Each end per ton	
	1st. 20 miles	Next 20 miles	Next 20 miles	Remainder of distance	* At Large Towns	At any other Towns	* At Large Towns	At any other Stations
	d	d	d	d	s d	s d	s d	s d
A	-	-	-	-	See below		- -	- -
B	2	1½	1¼	1	1 0	0 9	- -	- -
C	2½	2	1¾	1¼	1 3	1 0	0 9	0 6
1	3	2½	2	1½	2 0	1 6	1 6	1 0
2	3¼	2¾	2½	2	2 0	1 6	1 6	1 3
3	3½	3¼	3	2½	2 0	1 6	2 0	1 6
4	4	3¾	3½	3	2 0	1 6	2 9	2 0
5	5	4½	4	3½	2 0	1 6	3 6	2 6

Class A - General Scale

Excepting Slack--

Up to 50 miles	1d per ton per mile.
Exceeding 50 miles,	¾d per ton per mile.

Slack--

Up to 50 miles,	7/8d per ton per mile.
Exceeding 50 miles,	3/4d per ton per mile.

Station Terminals at each end.
Large Towns, 8d per ton.
Other Stations, 6d per ton.

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[1] Modern Railway Working, PP. 136-137.

*Large towns: London, Liverpool, Manchester and Birmingham Service terminals include loading and unloading, covering and uncovering.

Table II.

Board of Trade Proposals, 1890.

	Conveyance Rates per ton per mile					Service Terminals			
Classes	Up to 20 miles	21 to 50 miles	51 to 100 miles	Exceeding 100 miles	Station Terminals each end per ton	Loading per ton	Unloading per ton	Covering per ton	Uncovering per ton
	d	d	d	d	s d	s d	s d	d	d
A	0.90	0.85	0.70	0.60	0 6	- -	- -	-	-
B	1.25	1.15	1.00	0.85	0 9	- -	- -	-	-
C	1.70	1.60	1.45	1.15	1 0	0 3	0 3	1.0	1.0
1	2.20	2.05	1.80	1.55	1 6	0 5	0 5	1.50	1.50
2	2.65	2.50	2.20	2.00	1 6	0 6	0 6	2.0	2.0
3	3.00	2.85	2.70	2.35	1 6	0 8	0 8	2.0	2.0
4	3.65	3.45	3.30	2.90	1 6	1 0	1 0	3.0	3.0
5	4.30	4.05	3.75	3.40	1 6	1 3	1 3	4.0	4.0

Table III

Joint Committees' Proposals as Included in the Order Confirmation Act, 1891.

	Conveyance Rates per ton per mile					Service Terminals			
Classes	First 20 miles	Next 30 miles	Next 50 miles	Remainder of distance	Station Terminals each end per ton	Loading per ton	Unloading per ton	Covering per ton	Uncovering per ton
	d	d	d	d	s d	s d	s d	d	d
A	0.95	0.85	0.50	0.40	0 3	- -	- -	-	-
B	1.25	1.00	0.80	0.50	0 6	- -	- -	-	-
C	1.80	1.50	1.20	0.70	1 0	0 3	0 3	1.0	1.0
1	2.20	1.85	1.40	1.00	1 6	0 5	0 5	1.50	1.50
2	2.65	2.30	1.80	1.50	1 6	0 8	0 8	2.0	2.0
3	3.10	2.65	2.00	1.80	1 6	1 0	1 0	2.0	2.0
4	3.60	3.15	2.50	2.20	1 6	1 4	1 4	3.0	3.0
5	4.30	3.70	3.25	2.50	1 6	1 8	1 8	4.0	4.0

Notes:--Class A: These tolls are not applicable to certain portions of the Railway, provision of trucks not included.

Appendix X.

Cases Appealed from the Railway and Canal Commission

1889 - 1914.[1]

Year	Name of Case	Complaint	Result
1891	Sowerby case	Terminal charges	Commission sustained
1892	Pickering Phipps case	Undue preference	" "
1892	Liverpool Corn Traders' Association case	Undue preference	" "
1896	Mansion House Association case	Increase of rates	" "
1900	Forth Bridge case	Through rates	" "
1901	Cowan and Sons case	Undue preference	" "
1901	Black and Sons case	Increase of coal rates	" "
1902	Abram Coal Co. case	Undue preference	" "
1905	Pickford's Ltd. case	To distinguish rates	" "
1907	Lancashire & Cheshire Coal Association case	Short distance clause	Commission partly sustained
1907	Pickford's Ltd. case	Undue preference	Commission sustained
1908	North Staffordshire Colliery Owners' Ass'n. case	Increase of rates	Commission overruled
1909	Lever Brothers case	Undue preference	Commission sustained
1909	Holwell Iron Co. case	Undue preference	" "
1909	Joseph Watson & Sons case	Increase of rates	" "
1910	Spillers & Bakers case	Rebate	" "
1910	Great Central Ry. Co.case	Reasonableness	" "
1911	Weaver & Co. case	Rebate	" overruled

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1. This table deals with cases on rate disputes and covers only those which the writer has studied for the period in the Railway and Canal Traffic Cases, Vols. 7-15, 1889-1914.

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[1] In making this bibliography, the writer has made use largely of the State Historical Library and University Library of Wisconsin, Madison; University Library of Illinois, Urbana; John Crerar Library, Chicago; Chicago University Library, Chicago, and Michigan University Library, Ann Arbor, Michigan. Valuable help has also been received from the Congress Library, Washington, D. C., and Leland Stanford Junior University Library, California. Special mention should be made of the excellent J. J. Hill's collection of railway literature in the University Library of Wisconsin, Madison. The writer realizes, however, that the bibliography may not be as complete as one desires. In fact, no attempt has been made to make it complete; the present list will include only those which have direct connection with the subject of the Parliamentary Regulation of Railway Rates in England.

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Vita.

The writer was born at Chih Chow, Auhui, China, November 6, 1886. His preparatory work was done first in the Chinese grade schools and later in the academy of the University of Nanking at Nanking, Kiangsu, China. From 1901 to 1905 he attended the University of Nanking, a union missionary university, taking the A. B. degree with honors. From 1905 to 1914, except 1911-1911, he was engaged in the educational work in the various universities and colleges throughout China. Among the most noted ones of modern China. He taught in the University of Nanking at Nanking, 1905-1906; Nanyung University at Shanghai, 1908-1911; and Tsing Hua College at Peking, 1912-1914. He was also an editor of China's Young Men, 1908-1911, a quarterly English publication of the National Young Men's Christian Association of China, Japan and Korea. From 1911 to 1912 he was connected with the Provisional Government at Nanking, as an assistant secretary in the Board of Foreign Affairs and later as chief secretary in the Bureau of Foreign Affairs at Nanking. In the summer of 1914 he was secretary to the Director of the Educational Mission to the United States of America. From 1914 to 1915 he did graduate work in the Transportation Department of the University of Illinois, writing a thesis on "Low Charges in the Development of Freight and Passenger Traffic," and taking the A. M. degree in June, 1915. In America he was elected as chairman of the Chinese Students' Alliance and Chinese Students' Christian Association, mid-West section, each for one year in 1915-1916.

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